United States Court of Appeals

for the Second Circuit

APPENDIX

76-1348.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1367

B/S

UNITED STATES OF AMERICA,

Appellee,

—v.—

ROBERT BERKSON,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

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Churchill & Brodsky, Esqs.
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UNITED STATES COURT OF APPEALS
FILED
NOV 5 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Rec'd 11/5/76

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TABLE OF CONTENTS

	PAGE
Transcript of Trial	1
Government Witnesses:	
Linda Sussman	
Direct	2
Cross (Berkson)	4
Cross (Rind)	4
Re-direct	5
Loretta Ottinger	
Direct	6
Cross (Berkson)	7
Cross (Rind)	8
Cross (Berkson)	8
Cross (Rind)	10
Eugene Pugliese	
Direct	10
Cross (Berkson)	20
Cross (Rind)	21
Re-direct	22
Re-cross (Berkson)	25
Re-direct	26
Re-cross (Berkson)	27
Anthony Salamone	
Direct	29
Cross (Berkson)	30
Cross (Rind)	30

PAGE

James Gallentine
- Direct 31
- Cross (Berkson) 130
- Cross (Rind) 162
- Re-direct 192
- Re-cross (Berkson) 211
- Re-cross (Rind) 218
- Re-direct 226

Sam Caplan
- Direct 230
- Cross (Berkson) 238

Melvin Mayerson
- Direct 242
- Cross (Berkson) 245
- Cross (Rind) 245

Jeffrey Goldman
- Direct 250

Rudolph Rado
- Direct 251
- Cross (Berkson) 253
- Cross (Rind) 254

Eleanor Melling
- Direct 254
- Cross (Berkson) 258
- Cross (Rind) 258

Ethel Kaufman
- Direct 259
- Cross (Berkson) 260
- Cross (Rind) 260

PAGE

Anita Zatzkin
Direct 262
Questioning by Court 263

Elmer Twente
Direct 265

Richard Schreiber
Direct 267
Questioning by the Court 270

Jerome Harris
Direct 273
Cross (Berkson) 275
Cross (Rind) 275

Joseph Friedman
Direct 276

Maurice Schwach
Direct 277
Cross (Berkson) 278
Cross (Rind) 278

Jerome Pilpel
Direct 279
Voir dire (Berkson) 281
Direct (resumed) 288

Abraham Katz
Direct 292

Ephraim Bloch
Direct 294
Cross (Berkson) 309
Cross (Rind) 310

PAGE

David Lipschutz
Direct 312
Cross (Berkson) 318
Cross (Rind) 318

Allan Salovin
Direct 320
Cross (Berkson) 327
Cross (Rind) 330

Irving Bell
Direct 335
Cross (Berkson) 338
Cross (Rind) 338
Re-direct 339

Robert Bader
Direct 340
Cross (Berkson) 341
Cross (Rind) 342

Patricia May
Direct 342
Cross (Berkson) 348
Re-direct 348
Re-cross (Rind) 349
Re-cross (Berkson) 351

Martin Berkson
Direct 352
Cross (Berkson) 354

David Soffler
Direct 368
Cross (Rind) 369

PAGE

Motions 376

Summations 385

Requests to Charge 547

Charge 550

Exceptions to Charge 591

Supplemental Charge 599

Jury Request 601

Jury Request 604

Jury Request 610

Supplemental Charge 611

Partial Jury Verdict (Count 10) 622

Jury Verdict 625

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT JUDGE CANNELLA 75 CRIM. 608

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	John A. Lowe, AUSA 791-1987
1. ROBERT BERKSON 2. JAMES GALLENTINE 3. WILBUR HYMAN 4. MAURICE RIND	For Defendant:

Gallentine,
Arrest date for Berkson & Rind-6-30-75.

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
(04)						
J.S. 2 mailed ✓✓✓	Clerk					
J.S. 3 mailed 1 + 4 + 2	Marshal					
(3) open						
Violation	Docket fee					
Title						

15:78(1)(b),77ff Securities fraud,(Cts.1-3)
18:1341 Mail fraud,(Cts.4&5)
18:2314 Interstate transportation of stolen securities.(Cts.6-9)
18:371 Consp, so to do.(Ct.10)
(Ten Counts)

DATE	PROCEEDINGS
6-19-75	Filed Indictment.
6-30-75	Berkson & Gallentine(attys. present) Plead not guilty. Defts. ordered photographed and fingerprinted. Both released on their own recognizar Hyman- B/W ordered. Court directs entry of not guilty plea, Rind(no atty.) Court directs entry of not guilty plea.Ordered photogra phed and fingerprinted. Released on his own recognizance, Case assign to Cannella, J. for all purposes. Carter,J.
6-30-75	WILBUR HYMAN - Bench warrant issued.
7-28-75	JAMES GALLENTINE - Filed notice of appearance by Goldman & Hafetz 60 East 42nd St. & New York City
7-28-75	MAURICE RIND - Filed notice of appearance by Irving Anolik 225 B'Way NYC Tel. 732-3050
8-4-75	JAMES GALLENTINE - Filed letter dtd 7-11-75 from deft waiving right to be present at pre-trial conf.
9-22-75	ROBERT BERKSON - Filed stip.& order extending time to make motions through Sept.30-75...Cannella,J...

— OVER —

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DATE	PROCEEDINGS
9-24-75	MAURICE RIND - Filed affdvt. & notice of motion to inspect G.J.minutes and for a bill of particulars...
10-2-75	Filed Govt's memorandum in response to deft Rind's motion for discovery and bill of particulars. ..
10-3-75	R.BERKSON - Filed stip, & order extending defts time to make motions to 10-20-75 Cannella, J.....
10-20-75	R.BERKSON - Filed stip, & order extending deft time to make motion thru 10-30-75 Cannella,J.....
10-20-75	R.BERKSON - Filed order substituting atty's ...The firm of GOLDSTEIN, SHAMES & MYERS 455 Madison Ave. is substituted for all purposes....Cannella,J.
10-29-75	ROBERT BERKSON - Filed affdvt. & notice of motion for a bill of particulars and all exculpatory material....
3-8-76	WILBUR HYMAN - Filed warrant of arrest dated 6-30-75.
4-13-76	ROBERT BERKSON - Filed affdvt & notice of motion for an order dismissing the indictment Ret. [illegible] 6...
4-13-76	ROBERT BERKSON - Filed memorandum in support of motion to dismiss indictment..
4-26-76	JAMES GALLENTINE -Atty.present..W/D plea of N.G. and PLEADS GUILTY to ct.1 only.. P.S.I. ordered..Sent. 6-7-76 9:30 a.m. R.128 Deft.Cont'd. R.O.R. Cannella,J...
5-7-76 ****	[illegible] 7-10-75
5-3-76	R.BERKSON) Trial begun before Cannella,J.,with Jury. M.RIND)
5-4-76	Trial cont'd.
5-5-76	Trial cont'd.
5-6-76	Trial cont'd. COUNT 1 is DISMISSED By court.
5-7-76	Trial cont'd.
5-10-76	Trial cont'd.
5-11-76	Trial cont'd and concluded JURY returns with a DISAGREEMENT Court declares mistrial ...2nd trial on 6-1-76 10 a.m. room 128 Deft cont'd. R.O.R...
5-20-76	Filed order that a subpoena issue in accordance with Ti.28:1783 commanding W.Hyman to appear on 6-3-76***The U.S.M[illegible]al shall pay 36 dollars per day***Cannella,J... (notified U.S.Atty.)
6-7-76	M.RIND - Filed Financial Affidavit.
6-3-76	Second Trial Begun before CANNELLA,J with a Jury as to DEFTS BERKSON &
6-4-76	Trial Continued -
6-7-76	Trial Continued -
6-8-76	Trial Continued -
6-9-76	Trial Continued - And Concluded - Jury Verdict - DEFTS - BERKSON & RIND - Not Guilty on Count 2. Guilty on each of Counts 3 thru 10. - Jury Polled - Defts reserve motions for dismissal of sentence - P.S.I'S Ordered. Sentences on 7-21-76 at 9:30 A.M. Bail Cont'd as to Both Defts. CANNELLA,J
7-2-76	R. BERKSON —— Filed transcript of record of proceedings, dated June 3, 4, 7, M. RIND 8, 9, 1976

CONTINUED ON PAGE NO. 3.

DATE	PROCEEDINGS
	CANNELLA, J
7-21-76	BERKSON, ROBERT - Filed Judgment (Atty. Edward Brodsky, present) Imposition of sentence on each of counts 3,4,5,6,7,8, 9 and 10 are suspended. Defendant is placed on probation for a period of FIVE(5)YEARS, subject to the standing probation order of this court. Defendant is fined $5,000.00 on count 3, fined $10,000.00 on each of counts 6 and 7. Total fine of $25,000.00 to be paid upon such terms and conditions as the probation department finds the payment can be made, and if the payments are made before the 5 year probationary period is up, the court will entertain a motion to terminate the probation at the time. CANNELLA, J. Entered on: 7-22-76. JUDGMENT NO. 76,702
7-22-76	RIND, MAURICE - Filed Judgment (Atty. Irving Anolik, present) The defendant is committed for imprisonment for a period of EIGHTEEN(18)MONTHS on each of counts 3,4,5,6,7,8,9, & 10 to run concurrent with each other, pursuant to Title 18, U.S. Code, Sec. 4205(b) (2). Defendant is fined $5,000.00 on count 6, and fined $5,000.00 on count 7. Total fine of $10,000.00 is a non-committed fine. Defendant Released on own Recognizance pending appeal. Appeal to be pursued with rapid dispatch. CANNELLA, J Entered on: 7-22-76. JUDGMENT NO. 76,703
7-23-76	RIND, MAURICE - Filed NOTICE OF APPEAL of Deft to USCA 2nd Circuit, fro Judgment dated: 7-22-76. m-n Deft. c/o Atty. Irving Anolik, 225 Bdway, NYC , Atty. and US Atty.
7-23-76	ROBERT BERKSON - Filed notice of appeal from judgment dated 7-21-76..Copy given to U.S.Atty. and mailed to deft C/o atty. E.Brodsky.
8-16-76	Filed Govt's Sentencing Memorandum as to deft. Gallentine.
8-16-76	Filed Govt's . proposed examination of prospective jurors.
8-16-76	Filed Govt's supplemental proposed examination of prospective jurors.
8-16-76	Filed Govt's requests to charge.
8-16-76	Filed deft. Berkson's request to charge.
8-16-76	Filed Govt's Affidavit in opposition to deft's Berson's motion to dismiss.
8-16-76	Filed Govt's Memorandum in opposition to deft. Berkson's motion to dismiss.
8-16-76	Filed Govt's Bill of Particulars as to deft. Berkson.

[illegible]

[illegible] DISTRICT OF [illegible]

- -x

[illegible] OF [illegible],

- v -

[illegible],
[illegible],
[illegible] and
[illegible] INC.,

Defendants.

- -x

[illegible]

[illegible] 70 Cr. 608

The Grand Jury charges:

Introduction

1. At all times relevant herein, Pacher, Wilbur & Co., Inc. ("Pacher, Wilbur"), a corporation incorporated under the laws of the State of New York, was a registered broker-dealer engaged in buying and selling securities for its own account and for the account of customers with offices at 26 Broadway, New York, New York, until August 31, 1970, and thereafter at 160 Water Street, New York, New York, and at all times at 10 N. Ludlow Street, Dayton, Ohio.

2. At all times relevant herein, the defendant, [illegible], was a registered principal, a member of the Board of Directors and president of Pacher, Wilbur.

3. At all times relevant herein, the defendant, [illegible], was a registered representative, a member of the Board of Directors and vice-president of Pacher, Wilbur.

4. At all times relevant herein, the defendant, [illegible], was a registered principal, a member of the Board of Directors and secretary of Pacher, Wilbur.

5. At all times relevant herein, the defendant, [illegible], was employed by Pacher, Wilbur as cashier, and was in charge of all "back office" operations of Pacher, Wilbur, including maintenance of all books and records and custody of all securities held in trust for the customers of Pacher, Wilbur.

6. This Introduction is hereby incorporated and realleged in each count of this indictment as if fully set forth therein.

FRAUD SCHEME

7. From on or about June 1, 1970 up to and including the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT BERKSON, JAMES CALLENTINE, WILBUR HYMAN and MAURICE RIND, the defendants, and others unknown to the Grand Jury, unlawfully, wilfully and knowingly, did devise and employ a device, scheme and artifice to defraud in connection with the purchase and sale of securities, to wit, the common stock of Leasepac Corporation ("Leasepac") and the common stock of Robotguard, Inc. ("Robotguard") (the name of which was changed in September, 1970, to Site-Pak Industries Corporation), by unlawfully selling and pledging customers' securities for their own benefit.

8. It was a part of said scheme to defraud that the defendants BERKSON, HYMAN and RIND, as officers and directors of Packer, Wilbur, would purchase Leasepac and Robotguard stock for customers and would thereby, and by other means, obtain custody of the stock certificates representing securities which were owned by customers and held by Packer, Wilbur in trust for those customers.

9. It was further a part of said scheme to defraud that the defendants BERKSON, HYMAN and RIND would fraudulently sell and pledge their customers' Leasepac and Robotguard stock for the account of Packer, Wilbur and use the proceeds of said sales and pledges for the benefit of Packer, Wilbur and themselves, without obtaining authority from their customers to do so and without informing their customers that they were doing so.

10. It was further a part of said scheme to defraud that the defendants BERKSON, HYMAN and RIND would instruct the defendant CALLENTINE to forge their customers' signatures on stock transfer powers and deliver their customers' Leasepac and Robotguard stock with forged stock transfer powers to persons who purchased the stock from Packer, Wilbur.

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11. It was further a part of said scheme to [illegible] the defendant GALLENTINE would cause various clerical employees of Packer, Wilbur to forge customers' signatures on stock transfer powers and would then guarantee the validity of the forged signatures and deliver the customers' stock and forged stock transfer powers to persons who purchased the stock from Packer, Wilbur.

12. It was further a part of said scheme to defraud that the defendants LEVISON, HYMAN and REID would receive in excess of $200,000 as the proceeds of the sale of their customers' Leasepac and Robotguard stock and use the $200,000 for the benefit of Packer, Wilbur and themselves.

13. It was futher a part of said scheme to defraud that the defendants LEVISON, HYMAN and REID would make false and fraudulent representations to customers inquiring about or seeking the return of their securities to the effect that the customers' securities were still being held in trust for them by Packer, Wilbur, when in fact, as they then well knew, said securities had been sold or pledged for the account of Packer, Wilbur.

STATUTORY ALLEGATIONS

14. From on or about the 1st day of June, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT LEVISON, JAMES GALLENTINE, WILBUR HYMAN and MAURICE REID, the defendants, unlawfully, wilfully and knowingly, by use of means and instrumentalities of interstate commerce and the mails, did, directly and indirectly, use and employ in connection with the purchase and sale of securities, to wit, the common stock of Leasepac and the common stock of Robotguard, manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 [17 CFR Section 240.10b-5] of the rules and regulations of the United States Securities

[illegible] Commission, and (b) employ devices, schemes and artifices to defraud, (b) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engage in acts, practices and courses of business which operated and would operate as a fraud and deceit upon the customers of Packer, Wilbur, the purchasers of Leasepac and Robotguard stock and other persons.

15. On or about March 22, 1971, in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did use and cause to be used means and instrumentalities of interstate commerce and the mails pursuant to and in furtherance of the aforesaid scheme by causing certificates representing the number of shares of Robotguard stock hereinafter set forth to be sent through the mails from Packer, Wilbur, 160 Water Street, New York, New York, to the persons hereinafter set forth as follows:

ADDRESSEE	NUMBER OF SHARES
George Dragalini 210 East 6th Avenue New York, New York	500
Samuel Brody 71-40 112th Street Forest Hills, New York	250
Paul Burger 192-04 71st Crescent Flushing, New York	1000
Dena Burton 114 Serpentine Lane Scarsdale, New York	200
Al Calenda 111 DeHaven Drive Yonkers, New York	100
Chester Enterprises c/o Ian Bass 641 Broadway New York, New York	500

NAME	NUMBER OF SHARES
[illegible]	500
69 Shady Rock Dr. Toms River, New Jersey	
Harold Desner 47-19 Bell Blvd. Bayside, New York	600
Susan Desner 75 Gardner Street Brighton, Mass.	300
Autin DiPalma 2404 E. 66th Street Brooklyn, New York	500
Helen Drachsler c/o Glorinez Dress Shop 264 W. 35th Street New York, New York	800
Murray Endick 40 Morrow Avenue Scarsdale, New York	500
Alan Finkelstein 69-13 173rd Street Flushing, New York	100
Rose Gerkow c/O Dive Enterprises 60 Reid Avenue Dayton, Ohio	200
Goldman Foundation 333 West First Street Dayton, Ohio	1000
Bernard Goldman 60 Reid Avenue Dayton, Ohio	1500
Dan Griles Addressograph Multigraph 219 E. 42nd Street New York, New York	400
Industrial Mechanical Service Co. 1820 E. 30th Street Cleveland, Ohio	500
Milton Isaacson 240 Folson Drive Dayton, Ohio	1000
Peter Parella 425 E. 79th Street New York, New York	1000
Larry Silverberg c/o Eagle Converting Co. 39 W. 37th Street New York, New York	1000

(Title 15, United States Code, Section 79j(b) and 77ff; Title 18, United States Code, Section 2.)

[illegible]

[illegible further charges]

1. From on or about June 1, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, [illegible], the defendants, and other persons unknown to the Grand Jury, unlawfully, willfully and knowingly did devise and intend to devise a scheme and artifice to defraud the customers of Tucker, Miller, the purchasers of Timespace and Rolotmund stock and other persons, and to obtain money and properties from the aforementioned individuals and entities by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting to do so did place and cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the direction thereon certain mail matter to be sent and delivered by the Postal Service.

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in Counts Two and Three of this Indictment.

3. On or about the dates hereinafter set forth in Counts Two and Three in the Southern District of New York, the defendants unlawfully, willfully and knowingly and in furtherance of the aforesaid scheme to defraud did place and cause to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail according to the directions thereon to Schreiber Lease & Co., 353 Trader Building, Cleveland, Ohio, the matter hereinafter set forth:

2	August 13, 1970	Confirmation of purchase of 2,[illegible] shares of Leasepac stock
3	December 15, 1970	Stock certificates representing 419 shares of Leasepac stock

(Title 18, United States Code, Sections 1341 and 2.)

COUNTS FOUR AND FIVE

The Grand Jury further charges:

1. From on or about June 1, 1970, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT [illegible], JAMES CALLENTINE, WILBUR HYMAN and MAURICE REID, the defendants, unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, the common stock of Leasepac and the common stock of Robotguard, by the use of means and instruments of transportation and communications in interstate commerce and by use of the mails, directly and indirectly, (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon purchasers of said securities and other persons.

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in Counts Four and Five of this Indictment.

3. On or about the dates hereinafter set forth in Counts Four and Five, in the Southern District of New York, the defendants, unlawfully, wilfully and knowingly, and in furtherance of the aforesaid scheme to defraud, did cause to be delivered by mail to First Philadelphia Corp., 80 Wall Street, New York, New York, the matter hereinafter set forth:

COUNT	DATE	MATTER
4	August 21, 1970	Confirmation of purchase of 15,000 shares of Robotguard stock
5	September 18, 1970	Confirmation of purchase of 6,000 shares of Robotguard stock

(Title 15, United States Code, Sections 77q(a) and 77x; Title 18, United States Code, Section 2.)

COUNTS SIX THROUGH NINE

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Six through Nine, in the Southern District of New York, ROBERT BERKSON, JAMES GALLENTINE, WILBUR HYMAN and MAURICE REED, the defendants, unlawfully, wilfully and knowingly, and with unlawful and fraudulent intent, did transport in interstate commerce forged securities, knowing the same to have been forged, as follows:

COUNT	DATE	FROM	TO	SECURITY
6	8/18/70	New York, New York	Cleveland, Ohio	Leasepac stock certificates numbered NC2265,66,67, NU32,403
7	9/ 3/70	New York, New York	Jersey City, New Jersey	Robotguard stock certificates numbered NU3478,79,80,81, 82
8	12/15/70	New York, New York	Cleveland, Ohio	Leasepac stock certificates numbered NC250,2260
9	3/22/71	Chicago, Illinois	New York, New York	Leasepac stock certificate numbered NC2235

(Title 18, United States Code, Sections 2314 and 2.)

COUNT I

The Grand Jury further charges:

1. From on or about June 1, 1976 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT FULGONI, JAMES GALLANTINE, WILBUR LYMAN and WALTER SIMS, the defendants, and other persons unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, fraud in the offer and sale of securities in violation of Title 15, United States Code, Sections 77q(a) and 77x, securities fraud in violation of Title 15, United States Code, Section 78j(b) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission, mail fraud in violation of Title 18, United States Code, Section 1341 and interstate transportation of forged securities in violation of Title 18, United States Code, Section 2314.

2. It was a part of said conspiracy that said defendants and co-conspirators, unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, the common stock of Letsepac Corporation and the common stock of Pilotguard, Inc. (Fite-Pak), by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, would and did, directly and indirectly (a) employ devices, schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of said securities in violation of Title 15, United States Code, Sections 77q(a) and 77x.

3. It was further a part of said conspiracy that the defendants and co-conspirators, unlawfully, wilfully and knowingly, in connection with the purchase and sale of securities, to wit, the common stock of Leasepac and the common stock of Robotguard, would and did, directly and indirectly, by the use of means and instrumentalities of interestate commerce and of the mails, use and employ deceptive devices and contrivances in violation of Title 15, United States Code, Section 78j(b) and Rule 10b-5 (17 C.F.R. 240.10b-5), a rule prescribed by the Securities and Exchange Commission as necessary and appropriate in the public interest and for the protection of investors.

4. It was further a part of said conspiracy that the defendants, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would and did unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting so to do, cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the Postal Service in violation of Title 18, United States Code, Section 1341.

5. It was further a part of said conspiracy that the defendants, unlawfully, wilfully and knowingly and with unlawful and fraudulent intent, would and did transport and cause to be transported in interstate commerce forged securities, to wit, certificates of the common stock of Leasepac Corporation and Robotguard, Inc., knowing the same to have been forged in violation of Title 18, United States Code, Section 2314.

6. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in Count Ten of this indictment.

OVERT ACTS

7. In furtherance of said conspiracy and to effect the objects thereof, the defendants committed the following overt acts, among others, in the Southern District of New York:

(1) During August, 1970, the defendants LIND and GALLENTINE had a conversation in which they discussed illegally selling customers' securities for the benefit of Tacker, Wilbur.

(2) During August, 1970, the defendants [illegible] and GALLENTINE had a conversation in which they discussed illegally selling customers' securities for the benefit of Tacker, Wilbur.

(3) During August, 1970, the defendants PERKSON and GALLENTINE had a conversation in which they discussed illegally selling customers' securities for the benefit of Tacker, Wilbur.

(4) On or about January 9, 1971, the defendant [illegible] had a phone conversation with a customer of Tacker, Wilbur in which he falsely represented that the customer's stock was still held in trust by Tacker, Wilbur.

(5) On or about February 26, 1971, the defendant GALLENTINE sent customers' securities bearing forged stock transfer powers to Irving Trust Co. for transfer to the persons and entities to whom the stock had been sold for the account of Tacker, Wilbur.

[illegible] of the facilities and transportation in interstate commerce in Counts One through [illegible] of this Indictment are realleged and reallegedherein as overt acts.

(Title 18, United States Code, Section 371.)

[illegible]
United States Attorney

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rd ja

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

v. : 75 CR 608

ROBERT BERKSON and MAURICE RIND, :

Defendants. :

- x

June 3, 1976
2:15 p.m.

New York, New York

Before:

HON. JOHN M. CANNELLA,
District Judge

Appearances:

ROBERT B. FISKE, JR., ESQ.,
United States Attorney for the
Southern District of New York
BY: JOHN A. LOWE, ESQ.
Assistant United States Attorney

EDWARD BRODSKY, ESQ.
Attorney for Defendant Berkson

IRVING ANOLIK, ESQ.
Attorney for Defendant Rind

(A jury was duly impanelled and sworn.)

(Mr. Lowe made an opening statement on behalf of the Government.

(Mr. Brodsky made an opening statement on behalf of Defendant Berkson.)

(Mr. Anolik made an opening statement on behalf of Defendant Anolik.)

(Luncheon recess)

- - -

AFTERNOON SESSION

2:15 p.m.

(In open court - jury present)

MR. LOWE: The Government calls Linda Sussman.

L I N D A S U S S M A N, called as a witness on behalf of the Government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mrs. Sussman, I ask you to keep your voice up nice and loud so that everyone can hear you.

Directing your attention to the year 1970 and the early part of the year 1971, by whom were you employed?

A Packer, Wilbur & Company.

Q And in what capacity were you employed there?

A Secretary.

Q For whom?

A Maurice Rind.

Q Do you see Mr. Rind in the courtroom today?

A Yes.

MR. ANOLIK: We concede the identification, your Honor.

MR. LOWE: Thank you.

Q Mrs. Sussman, when you were employed at Packer, Wilbur, you were not married and your name was?

A Cangemi.

Q During the time that youwere employed at Packer, Wilbur & Company, did you have occasion to sign customers' names to stock transfer powers?

A Yes.

Q And approximately on how many occasions did you do this?

A Once or twice.

Q And did you do it at anyone's direction?

A Yes.

Q Who told you to do it?

A Mr. Gallentine.

Q At the time you did that, had you been shown anything in writing to indicate that it was appropriate

or proper for you to do that?

A I don't remember.

MR. LOWE: No further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Mrs. Sussman, Mr. Berkson never asked you to sign somebody else's name to a stock certificate, did he?

A No.

Q And he was never in your presence when you did sign somebody else's name to a stock certificate, was he?

A No.

MR. BRODSKY: Thank you.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Mr. Rind never asked you to sign any such thing, did he?

A No.

Q By the way, what time did you come to work in the morning?

A Nine-thirty.

Q What time did Mr. Rind come in ordinarily?

A After lunch.

Q He never came in before then, did he?

A No.

MR. ANOLIK: No further questions.

MR. LOWE: I have two questions, your Honor.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mrs. Sussman, do you remember the exact physical circumstances under which you signed the customers' names?

A I don't understand the question.

Q Well, do you remember exactly where you were when you did it?

A At my desk.

Q Do you remember who, if anyone, was around?

A Mr. Gallentine.

Q Do you remember whether anyone else was around?

A No.

Q Are you sure that Mr. Rind never came in to work until after lunch?

A Yes.

Q That's every day of the week?

A Yes.

MR. LOWE: I have no further questions.

MR. BRODSKY: Nothing further, your Honor.

MR. ANOLIK: Nothing further.

(Witness excused.)

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MR. LOWE: The government calls Loretta Ottinger.

L O R E T T A O T T I N G E R, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mrs. Ottinger, if you would, keep your voice up nice and loud so that everyone can hear you.

A Yes.

Q Back in 1970 and the early part of 1971, by whom were you employed?

A Packer, Wilbur & Company.

Q And in what capacity were you employed? What was your job?

A Bookkeeper.

Q Did there come a time when you had occasion to sign customers' names to stock transfer powers while you were at Packer, Wilbur?

A Yes, there did.

Q And approximately on how many occasions did that take place?

A I don't know; I couldn't give you a number.

Q Well, approximately. More than once?

A Yes.

Q As many as 10 times?

A I don't know.

THE COURT: Well, what is your best recollection?

THE WITNESS: I don't know; four or five times.

Q Did you do that at someone's direction?

A Yes, I did.

Q At whose direction did you do it?

A Mr. Gallentine.

Q Did you have any conversation with Mr. Gallentine about whether it was proper for you to do this or not?

A Well, you know, I asked him, you know, you shouldn't sign somebody's name, and he says he has the powers of attorney and the legal rights to do this, that it would be all right.

MR. LOWE: I have no further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Mrs. Ottinger, Mr. Berkson never asked you to sign anybody else's name to a stock certificate or stock power, did he?

A No, he didn't.

Q And he was never present when you were signing somebody's name, was he?

A Not directly by me, I can't say that.

BY MR. ANOLIK:

Q Mr. Rind never told you to sign somebody else's name, did he?

A No.

MR. ANOLIK: No further questions.

MR. BRODSKY: Just a minute, I have not finished.

MR. ANOLIK: I am sorry.

BY MR. BRODSKY:

Q You worked in the area where the stock certificates were kept, did you not?

A Yes.

Q Was that called a cage?

A Yes.

Q You were near the cage?

A Yes.

Q Or in the cage?

A Not in the cage.

Q Near it?

A Yes.

Q And Mr. Gallentine worked in the cage or near it?

A Well, what offices was it? It was two different offices.

Q Okay, where was the first office?

A Broadway.

Q Do you remember the address?

A Not exactly. It's a long time ago.

Q About how long ago?

A About five years.

Q But, in any event, you worked in an area near the cage in the office on Broadway, did you not?

A Yes.

Q And Mr. Berkson's desk was someplace else, was it not?

A That's correct.

Q In other words, you couldn't see each other, could you?

A No.

Q There were offices in-between, were there not?

A There were different rooms.

Q Different rooms. And where was the second office of Packer, Wilbur?

A On Water Street.

Q And was the same the case on Water Street as well? That is to say, there were different rooms where you worked and a different room where Mr. Berkson worked?

A Yes.

Q So he couldn't observe you in the course of your

day-to-day activity, could he?

A No.

MR. BRODKSY: Thank you, no further questions.

BY MR. ANOLIK:

Q And Mr. Rind, while he was in the office was at a desk near Mr. Berkson, is that correct?

A As far as I know, yes.

Q He didn't have a desk next to you?

A No.

MR. ANOLIK: No further questions.

(Witness excused.)

MR. LOWE: The government calls Eugene Pugliese.

E U G E N E P U G L I E S E, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Pugliese, keep your voice up nice and loud so everybody can hear you.

During the period, Mr. Pugliese, from May 1970 until the early part of 1971, by whom were you employed?

A By Packer, Wilbur.

Q What was your position with that firm?

A I wrote the P and S blotter, cash blotter, and

in the latter part I was learning the bookkeeping system.

Q Let's start with the P and S blotter. What is that?

A That is the purchase and sales of all transactions that occurred in the company.

Q What is the cash blotter?

A The cash blotter are all the cash entries going to the general ledger, trading positions, the payment of stocks by customers, the paying out of funds, expense accounts, salaries, all entries are on the cash blotter.

Q Who was your immediate supervisor?

A James Gallentine.

Q During the period we are talking about, did you have occasion, from time to time, to sign customers' names to stock transfer powers?

A At the request of James Gallentine.

Q Approximately how many times did you do that?

A An approximate number I couldn't give.

Q More than once?

A More than once.

Q As many as 10 times?

A It's possible.

MR. BRODSKY: I object to it, your Honor.

THE COURT: Well, let's put it this way:

Give us your best recollection of how many.

THE WITNESS: If I had to take a wild number I would say --

THE COURT: Not a wild number. The best number you remember, figuring what you did and remembering what went on at that time.

THE WITNESS: I would have to say at least roughly about 15 or 16 times.

BY MR. LOWE:

Q When you did this, Mr. Pugliese, physically where were you when you did it?

A At my desk.

Q Now, Packer, Wilbur was at two different places during the period that we are talking about, is that not correct?

A Correct.

Q And the first one was 26 Broadway?

A Correct.

Q How big was the office space you worked in at 26 Broadway?

A The room I was in, it was approximately a 9x15 room or thereabouts.

Q And how many people worked in that room with you?

A Nine.

Q When you were engaged in signing these stock transfer powers with customers' names, were you the only one doing it or were other people in the room doing it as well?

A Others were doing it as well.

Q And were you doing it right out in the open at your desk?

A Correct.

Q And at any time when you were signing customers' names in the fashion you have just described, were any of the officers of the company ever present?

A Yes.

Q And specifically was there ever an occasion when Mr. Berkson was present?

A Yes.

Q What was Mr. Berkson doing in the room you worked in at that time when you were signing the certificates?

A He may have just walked in the room in transit to Jim Gallentino. He was in transit going to the other room.

Q Well, was there ever any occasion that you can recall specifically what he was doing in the back office area?

A He may have been in to speak to Jim --

MR. BRODSKY: I object, your Honor. He says

"he may have been."

THE COURT: Yes, strike that part of it.

Read the question.

(Question read.)

B2 THE WITNESS: That's my question?

THE COURT: That's the question. Specifically. Not what he may have been doing but what you remember him doing.

A He might come in and ask about --

MR. BRODSKY: I object, your Honor.

THE WITNESS: The word "might"?

THE COURT: Yes, that's what's bothering him.

If you have any present recollection what he was doing at the time, tell the jury. Don't tell us what he may have done; he may have done a number of thing, but that's not the point.

A I know they were in the room; he wanted to go to talk to Jim, and they may have -- the word "may" is coming in again -- they may ask for drafts --

MR. BRODSKY: I object.

THE COURT: Strike the latter word "may" again.

Do you remember anything specific?

THE WITNESS: They were in the room checking to see whether things went to the bank, whether they didn't go

go to the bank, whether drafts were in or out --

THE COURT: You are talking about things --

THE WITNESS: Things concerning the company.

THE COURT: What are things? The jury doesn't know what your company does.

THE WITNESS: It's a brokerage house.

THE COURT: Of course it's a brokerage house, but I have never been in one, nor have many of these jurors. What happens there? What were they checking on? What pieces of pape. are you talking about? What were they checking on, books, or what?

THE WITNESS: They weren't checking the books I was working on. As I said, they were in the room checking to see if certain things were done that they wanted done, I don't know. They didn't speak personally to me.

MR. BRODSKY: I move to strike the anser, your Honor.

THE COURT Motion denied.

What is there in that room that you could look at?

THE WITNESS: What I was working on? Making entries to the general ledger, entries to the P and S blotter; entries to a cash blotter. If I was signing a customer's name to a stock power, these things were on my desk; if I

were getting things ready, drafts for the bank or clearances to the bank these things would have been on my desk.

THE COURT: Those are pieces of paper you are talking about?

THE WITNESS: These are pieces of paper and certificates that were on my desk.

THE COURT: Were stocks also kept in there or were they kept in another part?

THE WITNESS: The stocks were kept in a safe deposit box, a safety box.

THE COURT: Not in the same room?

THE WITNESS: They were within five feet of me.

THE COURT: Within five feet?

THE WITNESS: Within five feet. There was a safekeeping box.

THE COURT: What does a salesman do when he works for a company like that?

THE WITNESS: A salesman? They were in a different room, the salesmen.

THE COURT: I know --

THE WITNESS: They would answer telephones, take orders from customers, execute buy orders, sell orders.

THE COURT: Would there be an occasion for them

to come into your room and pick up any documents or papers or stock or anything else?

THE WITNESS: No, they never came into the room to pick up documents. They may have gone to the one who handled the customer's account to see if the customers received payments, whether checks were mailed out to customers, whether customers pay for the certificates, the order they purchased.

THE COURT: Well, what does the fellow who makes a market do? Do you know what that means? I frankly don't know too much about it, but I heard the expression here.

What does the fellow who makes a market do?

THE WITNESS: The one that makes a market?

THE COURT: In Berkson's position. He was a market-maker, wasn't he?

THE WITNESS: He was a boss; he was an owner of a company. Yes, one would have to say he was in that category.

THE COURT: Is there anything in there that he goes to look at or pick up or read or anything?

THE WITNESS: Not in my room, no. There would be nothing to pick up in my room.

THE COURT: Well, what, if anything, would he talk to Gallentine about that you know of?

THE WITNESS: The only thing he may have mentioned--

MR. BRODSKY: I object, your Honor.

THE WITNESS: The word "may"?

What he mentioned would be were deliveries made to the bank, or was a draft delivered to the bank? The exact wording may not have been used, but amounts to the same thing.

THE COURT: Was he inquiring, in effect, about the bank balance to some degree?

THE WITNESS: He wasn't inquiring about the bank balance; he wanted to know if deliveries were made to the bank.

THE COURT: What would they deliver to the bank?

THE WITNESS: Deliveries? Was a draft going to the bank where we make a delivery against payment.

BY MR. LOWE:

Q Was there ever any occasion when Mr. Rind was present while you were signing customers' signatures?

A Yes.

Q What was he doing there on those occasions?

A Same as Mr. Berkson.

Q Speaking with Mr. Gallentine?

A Yes, at all times it was to speak to Mr. Gallentine.

Q Did you ever overhear the conversations?

A The only conversation -- well, actually it was not overhearing; he was right next to me. I mean, people were speaking, not in a private office; they may have been within two or three feet of me: Were deliveries made to the bank? Did drafts go to the bank?

Q Mr. Pugliese, let me direct your attention first of all to Government's Exhibit 1C and the stock transfer power on the back thereof and let me ask you whether you signed any of the names on that page?

A Ephraim Block

Q The Ephraim Block signature was put on there by you?

A Yes.

Q Directing your attention to Government's Exhibit 4C for Identification, I ask you to check each of those stock transfer powers and tell us whether those signatures of Ephraim Block were put on there by you.

A They are all Ephraim Block and they were all put on by me.

Q And directing your attention to Government's Exhibit 9 for Identification, were any of those signatures put on there by you?

A Susannah Harris, just the female signature.

Q Government's Exhibit No.11 for Identification: Were any of those signatures put on there by you?

A Ephraim Block.

MR. LOWE: I have no further questions.

B3

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Pugliese, do you have a recollection now that Mr. Berkson was present at any time when you were signing somebody else's name to a stock certificate?

A Yes, they were in and out of the room. I don't mean that he physically stood over me but he was in and out of the room.

Q Do you remember testifying in a prior proceeding in this matter?

A Do I remember what?

Q Testifying in a prior proceeding in this matter.

A Yes.

Q Do you remember being asked these questions and giving these answers:

"Q Well, specifically relating this to any occasion when you were signing customers' names to stock transfer powers was Mr. Berkson present?

"A Mr. Berkson could have been present.

"Q Was he?

"A I can't be sure if Mr. Berkson was present."

Do you remember being asked those questions and giving those answers under oath?

A Yes, I remember saying --

Q Thank you.

Now, Mr. Pugliese, do you remember whether or not Mr. Berkson ever looked at you when you were signing these customers' names to certificates?

A I can't say that he looked at me. I always said if he was in the room, he was in and out of the room.

Q And he was in and out of the room very quickly; you said in transit before, is that correct?

A Correct. He was in and out of the room.

MR. BRODSKY: I have no further questions.

BY MR. ANOLIK:

Q By the way, when was this usually done, in the morning?

A I would say more p.m.

Q And you have no specific recollection of Mr. Rind at any particular time, have you?

A No, except he was in and out of the room.

Q In and out of the room when he was in the office, correct?

A Correct.

Q Therefore, you have no way of testifying that he specifically looked at anything or didn't look at anything, is that correct?

A Correct.

MR. ANOLIK: I have no further questions.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Pugliese, on that prior occasion that you testified that Mr. Brodsky read to you, shortly after the questions and answers that he read to you -- and referring now to page 255 of the transcript -- were you asked the following question and did you give the following answer --

MR. BRODSKY: I object to this, your Honor.

THE COURT: Who objects? I can't see who is objecting.

MR. BRODSKY: I did, your Honor.

May we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. BRODSKY: Judge, I think it is unfair to bring out merely the fact that he made a statement later on in that record which is consistent with what he says now unless Mr. Lowe also brings out the fact that what

happened, as your Honor may recall, is that Mr. Lowe showed him a piece of paper which is in Mr. Lowe's handwriting which he read, and then after he read that he changed his testimony.

THE COURT: Well, I think the rules require that he be given an opportunity to put anything else in that relates to the subject.

MR. BRODSKY: Yes, sure, but if he is going to do it I am suggesting he does it in toto, not that he does it piecemeal.

MR. LOWE: Nobody suggested we had to do it in toto. You read the part you wanted.

MR. BRODSKY: Sure.

THE COURT: I don't think it is necessary to do it exactly as he did it in the first trial if, in fact, the answer appears there and is not predicated on some document in which the answer doesn't show. I mean, this document you are talking about, he simply looked at it, right?

MR. BRODSKY: He looked at it and said, "That refreshes my recollection," because if he is going to do it the way Mr. Lowe wants to do it I think I should have the right to come back --

THE COURT: Yes, you would have the right to

come back and show that he refreshed his recollection.

MR. BRODSKY: Either way, I don't care how he does it.

THE COURT: Yes, if he wants to do it that way he can just read what he wants in, but then you have the right to show that he refreshed his recollection.

MR. LOWE: I don't object to that.

(In open court.)

BY MR. LOWE:

Q In any event, Mr. Pugliese, were you asked this question and did you give this answer --

MR. BRODSKY: I'm sorry, I missed the page, excuse me.

MR.LOWE: 255.

Q "Question: Was there ever an occasion when you were signing customers' names to stock transfer powers on which Mr. Berkson was present?

"A Yes."

Were you asked that question and did you give that answer on the prior occasion on which you testified?

A Yes.

MR. LOWE: No further questions.

RECROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Pugliese, before you gave that answer which you just gave in a prior proceeding, you were shown by Mr. Lowe this piece of paper, Exhibit 3502A for Identification, were you not?

A Yes, because I misunderstood --

MR. BRODSKY: Just a minute.

THE COURT: Don't explain anything. Just answer yes or no.

A Yes.

Q And this piece of paper, 3502A for Identification is a piece of paper which is in Mr. Lowe's handwriting, is it not?

A Correct.

Q And before giving the answer which Mr. Lowe just read, you read this piece of paper, 3502A which is in Mr. Lowe's handwriting, isn't that correct?

A Correct.

Q And immediately after you read it you gave the answer which Mr. Lowe just read, is that correct?

A Correct.

MR.BRODSKY: Thank you.

Q Now, Mr. Berkson never asked you to sign any

customers' names to a stock certificate, did he?

A No.

Q And you never told him you were signing customers' names to stock certificates, did you?

A No.

MR. BRODSKY: Thank you, Mr. Pugliese.

BY MR. ANOLIK:

Q That would also be true of Mr. Rind; he never told you to sign any stock certificates?

A Correct.

REDIRECT EXAMINATION

BY MR. LOWE:

Q That piece of paper, Mr. Pugliese, that Mr. Brodsky was asking you about, bears your signature, does it not?

A Correct.

Q And that was written out by me in my office with you present, is that correct?

A Correct.

Q And it was after we had a conversation, is that right?

A Yes.

Q And the substance of what you had to say during the conversation is reflected on that piece of papers?

A Yes.

Q And signed by you?

A Yes.

Q Just read it quietly to yourself for a moment, please.

A (Reading) Yes?

Q Is everything on that piece of paper correct to the best of your knowledge and belief?

A Yes.

MR. BRODSKY: I object, your Honor.

THE COURT: Overruled.

RECROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Lowe signed this as well, did he not, this piece of paper?

A I believe he signed as a witness, but I read it and I knew what he was writing.

MR. BRODSKY: Thank you. No further questions.

MR. LOWE: I have no further questions.

BY MR. ANOLIK:

Q This piece of paper, 3502A, does not relate to Mr. Rind, does it?

MR. LOWE: Objection.

A It relates to both.

Q When you say Mr. Rind, you are talking about Rind and/or Berkson, is that what you said?

A No --

MR. LOWE: I am going to object to what is on that paper unless it is in evidence.

B4 THE COURT: Sustained in the form in which the question is put.

Q You have no independent recollection of this as to Mr. Rind, any independent recollection when Mr. Rind was at a particular place at a particular time, do you?

A I don't understand your questioning. You are confusing me with your question.

Q In other words, Mr. Rind never told you to sign any paper --

A I said before, neither Rind nor Berkson ever told me to sign anything.

Q And you don't recall Mr. Rind ever telling you to do anything improper, isn't that so?

A Correct.

MR. ANOLIK: No further questions.

THE COURT: All right, you may step down.

(Witness excused)

MR. LOWE: The Government calls Anthony Salamone.

A N T H O N Y S A L A M O N E, called as a witness on behalf of the Government, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Salamone, back in 1970 and the early part of 1971, by whom were you employed?

A Packer, Wilbur & Company.

Q And in what capacity were you employed by that company? What was your job?

A A runner, received and delivered.

Q Who was your immediate supervisor?

A James Gallentine.

Q Did there ever come a time, Mr. Salamone, during your employment at Packer, Wilbur when you signed customers' names to stock transfer powers?

A Yes.

Q Would you tell us approximately, to the best of your recollection on how many occasions that occurred?

A I have no idea. I signed what I was told to sign.

Q Did youdo that at anyone's direction?

A Jim Gallentine's.

Q Did you have any conversation with Mr. Gallentine regarding whether or not it was proper for you to sign someone else's name to a piece of paper?

A I had questioned it, and he had said it was okay. Actually, he was taking all the responsibility.

MR. LOWE: I have no further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Berkson never asked you to sign anybody's name to a stock certificate or a stock power, did he?

A No.

Q And you never told Mr. Berkson that you were signing other people's names to stock power or stock certificates, did you?

A No.

MR. BRODSKY: Thank you.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q You were never told by Mr. Rind to sign anything such as a --

A No. I was directly under Jim Gallentine.

Q Mr. Rind never told you to do anything improper,

did he?

A No, not that I know of.

MR. ANOLIK: No further questions.

THE COURT: You may step down.

(Witness excused.)

J A M E S G A L L E N T I N E, called as a witness on behalf of the Government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Gallentine, I am going to ask you to keep your voice up nice and loud because there is some competition out in the hallway to contend with.

Mr. Gallentine, are you a defendant in the case which is presently on trial?

A Yes.

Q And have you entered a plea of guilty to one of the charges in the indictment?

A Yes.

Q And specifically to what charge have you pleaded guilty?

A Count 1.

Q Is that securities fraud?

A Yes.

Q Now, Mr. Gallentine, during the period of time 1970 and the early part of 1971, by whom were you employed?

A Packer, Wilbur & Company.

Q And what was your position at that firm?

A As a cashier.

Q What was the business of Packer, Wilbur & Company?

A A stockbroker.

Q And can you tell us in general, remembering that none of us are experts in the business, what, in general, is the business of a stockbroker?

A Handling trades, dealing with the buying and selling of securities.

Q For whom?

A For customers, for the public and for brokers -- other stockbrokers.

Q And also for the firm itself?

A And for the firm itself.

Q Now, can you tell us what your function was, what your duties were as cashier of the firm?

A Responsible for the back office operations, which includes the record-keeping, the bookkeeping, the accounting of the daily operations.

Q What, if any, responsibility did you have for

physical custody of securities, that is to say, stock certificates?

A Also responsible for the physical certificates or stock that we had in our possession.

Q Who were your superiors at Packer, Wilbur & Company?

A Mr. Hyman was the president. He was my superior.

Q Did you take orders from anyone other than Mr. Hyman?

A I took orders from Mr. Rind.

Q Anyone else?

A No.

Q Do you see Mr. Rind in the courtroom?

A Yes.

Q Could you point him out for the record, please?

A Mr. Rin is sitting at the end of the table, the one on the end.

Q Do you see Mr. Berkson in the courtroom?

A Yes, Mr. Berkson is there also.

Q The gentleman who just stood up?

A Yes.

Q Mr. Gallentine, directing your attention to August and September of 1970, what was the condition of

rd ja 6 Gallentine - direct

Packer Wilbur's bank account at that time?

A At that time we were operating at a deficit or in an overdraft situation on occasion.

Q How many occasions?

A I wouldn't know.

Q Was it almost every day?

A I wouldn't say almost. There may have been a period of a week where we were overdrawn two or three days. This I can't say.

Q When you say you were in an overdraft situation, what does that mean?

A That means that we had checks at the bank that needed to be paid, that we didn't have the funds in the bank for the bank to pay the checks.

Q And when that happened, how would you find out about it?

A The bank would call me.

Q And then what would be done about the situation?

MR. BRODSKY: May I step up a minute, please?

THE COURT: Yes.

(At the side bar)

MR. BRODSKY: Your Honor, we are starting earli to get into this overdraft situation. I, of course, take the position that the fact of the overdraft is irrelevant

ja 7 Gallentine - direct

to whatever we are doing here.

I would ask your Honor to exclude such evidence. That is my first application.

THE COURT: I decline to do so.

MR. BRODSKY: Short of that, I would ask your Honor to charge the jury, as you did in the last trial sevearl times, why such evidence comes in, so that right at the beginning we can have an understanding of what this evidence is all about and won't come to the wrong conclusion about it, that there may be something wrong or criminal about having overdrafts at the bank. That is coming in, as you said at the last trial, solely on the question of motivation.

THE COURT: I think that is the only purpose of it, isn't it, Mr. Lowe?

MR. LOWE: Yes, your Honor.

MR. BRODSKY: But the jury doesn't know it.

THE COURT: All right.

MR. ANOLIK: I reminded your clerk that Monday I have an appellate argument in the U. S. Court of Appeals upstairs.

THE COURT: What time?

MR. ANOLIK: I have asked to go on first. They will let me know. It's on at 10:30.

rd ja 8 Gallentine - direct

THE COURT: Well, all right. Tomorrow we will do something about it.

MR. ANOLIK: I just wanted to remind you about it.

(In open court)

THE COURT: In reference to this evidence which is coming in about overdrafts in the bank, I assume all of you realize that the mere fact there is an overdraft in and of itself does not constitute a crime.

In any event, even if it did, which I am saying it doesn't, it's not what we are trying here. The only reason it is being allowed is to show motivation for certain activity that went on, if you find it to be motivation for that activity in fact.

BY MR. LOWE:

Q Mr. Gallentine, I would like to direct your attention to Government Exhibits 36 and 37 for identification.

Can you tell us what those documents are?

A Yes. These are bank statements from the American Bank & Trust Company for Packer, Wilbur & Company.

Q And are they for August and September of 1970?

A This is September and this one is August, yes.

Q Which is which?

rd ja 9 Gallentine - direct

A This one is August (indicating)

Q 36 is August, 37 is September?

A Yes.

MR. LOWE: The Government offers 36 and 37 in evidence.

MR. BRODSKY: I have the same objection, your Honor.

THE COURT: All right. It's taken subject to the same ruling, namely, I am allowing it into evidence for that one purpose.

MR. ANOLIK: Rather than just repeating objections, I assume that an objection to one counsel will redound to the benefit of both, your Honor.

THE COURT: No, I don't think you can assume that because you have interests here which are not together at some points in time, and I can't assume that.

If you have an objection to this, I overrule the objection.

MR. ANOLIK: Very well, your Honor. Just to protect the record.

(Government's Exhibits 36 and 37 are received in evidence.)

BY MR. LOWE:

Q Mr. Gallentine, directing your attention to

Government's Exhibit 36 in evidence, I would ask you to look at it and I will ask you whether that refreshes your recollection as to whether the account was in an overdraft position almost every day in August.

A This shows that it was an overdraft situation. This shows that it was an overdraft situation.

THE COURT: He didn't ask you that.

THE WITNESS: It doesn't refresh my memory, no. I can only go by the record.

Q Now, you have told us that you would learn of the overdraft by a call from the bank. What would be the next step that you would take upon learning of an overdraft?

A I would have to find out what proceeds we had coming in for the day to see if the overdraft could be covered or not.

Q How would you do that?

A By making up a deposit of the receipts for the day to see if it would cover it. Oftentimes it would.

Q When it didn't, what did you do?

A Now, if it didn't happen to cover, then I went to Mr. Rind, because at this particular time he was handling the financies of the day-to-day operations. I mentioned to him that we would need a certain amount of

money in order to cover the overdraft.

Q What would happen after that?

A Well, then, steps wouldbe taken to make or cover the overdraft.

Q What steps?

A I would have a trade that we had been able to draft through the bank or to send down to the account at the bank against which we would get a loan which would cover the overdraft.

Q Now, if you would just explain the precise mechanics of what you just talked about; that is, drafting a trade through the bank. Tell us exactly what takes place.

A Packer, Wilbur would make a sale to another broker. We would take those certificates or the stock for that particular trade to the bank, and they would allow us or make a loan against that trade. They would advance us or make a loan to us for the amount of that trade.

Q Now, Mr. Gallentine, did there come a time in August of 1970 when Mr. Rind borrowed an amount of Leasepac stock from Packer, Wilbur & Company?

A Yes.

Q How did that transaction first come to your attention?

A Mr. Rind came to me and said that he was going to negotiate a loan for the company, for Packer, Wilbur, with the use of 10,000 shares of Leasepac stock which we had in our trading position.

Q What, if anything, did Mr. Rind tell you to do?

A Well, at thattime we did not have in our possession certificates for 10,000 shares. So we had to find --

Q Mr. Gallentine, if you don't mind, the question was what, if anything, did Mr. Rind tell you to do?

A Oh, he told me to get up the 10,000 shares.

Q Did you have 10,000 shares that belonged to Packer, Wilbur available at that time?

A Yes.

Q Did you have certificates for those shares available?

A No, we did not have the certificates.

Q Did you speak to Mr. Rind about that fact?

A Yes, yes.

Q What did you say to Mr. Rind and what did he say to you?

A I told him we did not have -- physically we did not have the 10,000 shares, that we didn't have the 10,000 shares. So he instructed or he said to find the 10,000

shares and get up the 10,000 shares.

Q Was there any discussion about where to find the 10,000 shares?

A Yes. We had to use the customers' securities that we had in safekeeping, which we were holding for customers' accounts, stock in their name which we had to use or which we did use.

Q What, if any, conversation did you have with Mr. Rind about that?

A The only conversation we had is that we had to use those certificates. We had to use some customers' certificates.

Q Who said what? What did you say to Mr. Rind, what did Mr. Rind say to you?

A I said that we had to use some of the customers' stock, and he said to use some of the customers' securities.

Q What, if anything, had to be done physically in order to use the customers' stock?

A In order to use the customers' certificates, then we had to forge some stock powers. We had to sign some stock powers that -- we had to sign some stock powers for those certificates that we used.

Q What is a stock power?

A Instead of signing or endorsing your certificate,

a stock power is signed. It's in lieu of signing the actual certificate.

Q What is accomplished by signing a stock power?

A The same as endorsing the certificate.

Q What is accomplished by endorsing the certificate?

A Making a certificate negotiable.

Q Which means freely transferable from one person to another; is that right?

A Yes.

Q Did you have any conversation with Mr. Rind on the subject of the need to forge the customers' signatures?

A No specific conversation. It was just understood that this had to be done. There is no specific conversation that had to be made. He was trying to make a loan. There was something that we had to do, and it was done.

There is no specific conversation stating just exactly whose stock power to be signed or what stock power to be signed.

Q Well, did you have any conversation with him in general about anybody's stock transfer power being signed?

A No. Just that we had to use some certificates, that's all, in order to get up the 10,000 shares, which

I did.

Q At the time you did this, did you have authority from the customers to sign their names or cause their names to be signed to a stock transfer power?

A No.

Q Did you have any conversation with anyone regarding whether or not it was a legal and proper act on your part?

A No.

Q Were you aware at the time of the legality and propriety of that act?

A Yes, of course. I knew that something wrong was being done, yes, of course.

Q And you did not discuss that with anyone?

A No, no.

Q Mr. Gallentine, directing your attention to Government's Exhibit 15 for identification, can you identify the signature on that document?

A It looks like Robert Berkson.

Q Directing your attention to Government's Exhibit 18 for identification, can you identify the signatures on those two documents?

A Yes, this is Maurice Rind.

Q You will have to keep your voice up so the jury can hear you.

rd ja 16 allentine - direct

A Maurice Rind.

MR. LOWE: The Government offers Exhibits 15 and 18 into evidence. Also Government's Exhibit 16 for identification as a record of the transfer agent for Leasepac stock; Government's Exhibit 17 as a record from the Euclid National Bank; Government's Exhibits 19, 19-A, and 19-B, records of the Euclid Bank.

(Pause)

MR. ANOLIK: May we have a bench conference?

THE COURT: Yes.

(At the side bar)

MR. ANOLIK: Since the last trial my client has found this affidavit from Mr. Hyman with respect to these 10,000 shares.

Mr. Hyman said that, "Said certificates are in good transferable and deliverable form, that Packer, Wilbur has the right to sell, transfer, sign, pledge, hypothecate or otherwise deal with the said shares."

It goes on to explain the said transaction.

THE COURT: How are you going to get that in?

MR. ANOLIK: The point is Mr. Lowe told me that he has seen this document before, have you not?

MR. LOWE: True, I have seen a copy of that document, but I believe it is hearsay.

rd ja 17 Gallentine - direct

THE COURT: It is hearsay and he has no right of cross-examination.

MR. BRODSKY: It's no different than those other documents which were stipulated to. The letter from Ira Ruben, which we did agree to stipulate to this.

MR. ANOLIK: This is almost Brady material. It is exculpatory.

THE COURT: A defendant in a case that signs an affidavit and he is not here and he can't be cross-examined, I don't think so.

MR. ANOLIK: Can I confront the witness with it and ask him if he saw it? It may refresh his recollectio

THE COURT: What is there to refresh his recollection about? This is what Hyman says.

MR. BRODSKY: Maybe we are not all on the same wavelength here. This document, which hasn't bee marked yet, this affidavit, is a document which was given to the Euclid Bank in connection with the bank's giving credit, or whatever it gave, in connection with this very transaction. In other words, it is not an affidavit filled out after the fact where he is making a confession or admission that is helping us.

This is a document which is filed in connection with a whole load of documents when somebody wants to get

a loan and the bank relies on this and the other documents Mr. Lowe wants to put in evidence.

MR. LOWE: The documents are the bank's own documents. If you wish me to call Mr. Ruben, I will.

MR. BRODSKY: I have stipulated to that.

MR. LOWE: He can be here if you want him.

THE COURT: If that is a fact ante litem motam, whatever the Latin is, then I think it would be allowable. But it is not signed.

MR. BRODSKY: Mr. Lowe has a signed copy.

THE COURT: I don't know whether he has or not. In any event, I wouldn't allow it now. I would allow it as part of your case.

MR. BRODSKY: Why should the jury have half a story, Judge?

THE COURT: I don't know about their having half a story. These documents are properly authenticated and everything else.

This one here, it is unsigned at this point, and you say that he has an original. I don't know about that.

MR. BRODKSY: I think. I don't know.

MR.LOWE: I don't have an original that is signed. My point is this: These documents that you have

rd ja 19 Gallentine - direct

agreed to stipulate to are of a different nature. They are only a record of where the stock went and where the money went.

This expresses Hyman's statement that they had the right to pledge that stock.

THE COURT: Assuming they had the right to pledge the stock, they wouldn't have the right to forge the signatures on them.

MR. LOWE: Your Honor, what happened here is they have this stock transferred into Packer, Wilbur's name before they sent it to the bank, after they forged the customers' signatures.

Hyman's action here, by our contention, was to make the bank believe that everything was all right, even though everything was not all right.

Now, I don't know what that goes to. It doesn't change the nature of the transaction in any way. If Mr. Rind claims that he relied on Hyman's representation, that is up to Mr. Rind to establish. The fact that Mr. Hyman made that representation doesn't prove anything except that Mr. Hyman made a representation contrary to the facts at the time as part of the overall conspiracy which we claim Mr. Hyman was part of.

The only relevance that document could have

would be if Mr. Rind's contention was, or Mr. Berkson's contention, that they were relying on the representation of Mr. Hyman that everything was proper.

Absent that kind of evidence either from them directly or whether they were told that at the time, expressing their current state of mind, I don't think that what Mr. Hyman said is particularly relevant, particularly when it was in furtherance of the scheme we are prosecuting.

MR.ANOLIK:Except Mr. Gallentine may have seen this at the time.

MR. BRODSKY: One other thing, Judge. It is our contention, and here Mr. Lowe is putting in these documents indicating that Berkson and Rind had something to do with this transaction -- it has always been my contention that Hyman was the man behind everything.

THE COURT: I would allow it as part of your case, but not at this time.

So you can mark it for identification, and then take it up when you put in your case.

MR. BRODSKY: All right.

THE COURT: Mark it for identification. In the meantime we will take the others.

MR. BRODSKY: With your permission, since there is a document --

rd ja 21 Gallentine - direct

MR. LOWE: I am going to tell them what it is.

(In open court)

MR. ANOLIK: I would like to have this marked for identification at this time.

(Defendant Rind's Exhibit A is marked for identification.)

THE COURT: Proceed.

(Government's Exhibits 15, 16, 17, 18, 19, 19-A, 19-B are received in evidence.)

MR. LOWE: Ladies and gentlemen, Government's Exhibit 15 in evidence is a certified copy of a resolution of Packer, Wilbur & Co., Inc., adopted at a special meeting of the Board of Directors, August 10, 1970, which effectively states that "The Company is authorized to pledge 10,000 shares of Leasepac stock as collateral for a $300,000 one-year loan to be made by Euclid National Bank to Allegro Sound Studios, Inc., and resolved that Mr. Maurice Rind is authorized to deliver the shares of Leasepac Corporation to Euclid National Bank as collateral for the loan and to execute any documents required by the bank in connection therewith."

It contains the statement that "Robert Berkson, secretary of Packer, Wilbur, certifies that the above constitutes a true copy of the resolutions."

It bears Mr. Berkson's signature and is dated August 11, 1970.

Government's Exhibit 18 in evidence contains resolutions of Allegro Sound Studios, Inc., and Theatre Systems Corporation relating to the loan transaction with Euclid National Bank.

Both of them are signed by Maurice Rind, representing himself as the secretary of both of those corporations.

MR. ANOLIK: That is of which corporations?

MR. LOWE: Allegro Sound Systems and Theatre Systems.

Government's Exhibit 17 is a letter from an attorney delivering certain certificates of Leasepac stock to the Euclid National Bank in Cleveland.

Government's Exhibit 19 is the note at Euclid National Bank signed by Maurice Rind and others.

Government's Exhibit 19-A is a guarantee of that note signed by Maurice Rind.

Government's Exhibit 19-B is the loan disbursement authorization and the credit memos delivering the money to the Sterling National Bank for the account of Allegro Sound Studios, $300,000.

Government's Exhibit 16 is the record of the

bank, which is the transfer agent for Leasepac, showing where the stock that was sent to the Euclid National Bank came from.

BY MR. LOWE:

Q Directing your attention to Government Exhibit 2 for identification, is that a record of Packer, Wilbur & Company?

A Yes.

Q And 2-A, is that also a record of Packer, Wilbur?

A Yes. They are duplicates.

Q 2-A is a different copy of 2, is that correct?

A Yes.

Q What kind of record is Government Exhibit 2?

A It is a copy showing 2,000 shares of Leasepac Corporation being taken out of the box and going into the draft account.

Q Is that a copy which is known as a confirmation?

A Yes. This is a copy of the confirmation of a trade with Schreiber Bosse. This copy is used for internal bookkeeping purposes, taking the stock out and putting it in the draft account.

Q What happens to the original of that document?

A Mailed to Schreiber Bosse & Company.

Q With respect to Government's Exhibit 2-A, whose

handwriting is on that document?

A This looks like mine.

Q And what does that handwriting reflect?

A It reflects the number of shares of Leasepac Corp. being delivered to Schreiber Bosse with the denominations of the certificate and the certificate numbers.

Q And when did you write that on there?

A August 14th.

Q Of 1970?

A 1970, yes.

Q And was that your regular practice to make a record of what certificates were delivered for a trade by writing it on a ticket like that?

A Yes.

MR. LOWE: The Government offers Exhibits 2 and 2-A in evidence.

(Pause)

MR. BRODSKY: I have no objection.

MR. LOWE: The Government also offers Exhibits 2-B as a record of American Bank & Trust Company; 2-C as a record of the Cleveland Trust Company; and that portion of 2-D outlined in red as a record of Schreiber Bosse, all having to do with the same transaction.

MR. BRODSKY: No objection, your Honor.

MR. ANOLIK: No objection.

(Government's Exhibits 2, 2-A through 2-D for identification are received in evidence.)

BY MR. LOWE:

Q Mr. Gallentine, directing your attention to Government's Exhibits 2-E and 2-F for identification, I ask you to look at the customer's signature on the stock transfer power and tell me, if you can, who signed the customer's names.

A I did.

Q On both of them?

A Yes.

Q In addition to that, directing your attention to Government's Exhibit 2-A, are the certificates reflected by Government's Exhibits 2-E and 2-F reflected on Government's Exhibit 2-A?

A Yes.

Q And does that mean that these certificates, among others, were used to satisfy the transaction reflected on Government's Exhibit 2-A, the sale to Schreiber Bosse & Company?

A Yes.

MR. LOWE: The Government offers Exhibits 2-E and 2-F in evidence.

(Pause)

MR. BRODSKY: No objection, your Honor.

MR. ANOLIK: No objection.

(Government's Exhibits 2-E and 2-F are received in evidence.)

BY MR. LOWE:

Q Mr. Gallentine, with regard to Government's Exhibits 2-E and 2-F, the signatures of Dan Griles and Joseph Gorabor, did you have any authority to sign their names to these documents when you did it?

A No.

Q This transaction with Schreiber Bosse & Company in Cleveland, how did it first come to your attention?

A When I had that unit to make up the delivery.

Q From whom did you get that?

A I didn't get it from anyone. It came in with the day's work. It probably came in with the day's work. I didn't get it from anyone in particular.

Q Did you have any conversation with anyone regarding this transaction with Schreiber Bosse?

A I went to Mr. Rind and said that we needed -- that we didn't have enough stock to cover this transaction. So we had to go ahead and make up -- sign these stock powers in order to make up the delivery.

Q What, if anything, did Mr. Rind say to you?

A It was just understood. It was something that had to be done, that's all.

Q Mr. Gallentine, you went and spoke to Mr. Rind, is that right?

A Yes, yes.

Q And you told him there was not enough stock to cover the transaction?

A Yes, right.

Q And you told him that you were going to have to use customer stocks?

A Yes.

MR. ANOLIK: Objection to leading, your Honor.

THE COURT: Well, he already testified to this. Since he has, I will allow it. Overruled.

Q You told him you were going to have to sign customers' names to the stock transfer powers?

A Not in so many words, no. It was understood. We were in a cash situation, we were trying to stay in business.

Q What was the basis for this understanding?

A I don't understand the question really, when you say what is the basis for it.

Q Mr. Gallentine, you testified that you knew what

you were doing was illegal. What was the basis for your understanding that it should be done?

A In order for Packer, Wilbur to stay in busienss, to continue its operations.

Q From whom did you get that understanding?

A From Mr. Hyman and Mr. Rind.

Q What, if anything, did Mr. Rind say to you to give you the understanding?

A He said that he was bringing in a million dollars of new capital. Mr. Hyman informed me that we had 20,000 warrants of Leasepac which were going to be exercised, with which we would be able to cover and satisfy the customers' stock that we were using.

Q Who, if anyone, gave you an understanding that you should commit a crime?

A I don't believe anybody gave me the understanding that we should commit a crime.

Q Who gave you the understanding that you should forge or have somebody else forge the customers' names?

A You would have to say Mr. Rind and Mr. Hyman.

Q What did Mr. Rind tell you that gave you the specific understanding?

A That we were trying to stay in business.

Q And from that you understood you were to commit

forgery?

A It was a means of trying tostay in business. That's all I can say.

Q Mr. Gallentine, what did Mr. Rind say to you that led you to understand he meant for you to forge customer signatures?

A That we needed the certificates in order to make the delivery. We needed the certificates in order to make the delivery, so this is the only way it could be done. It was just a mutual understanding. Nothing was said, do this, do that and the other thing.

When you are operating a business, when you are working on something there are certain things that you do because -- not because it's stated explicitly. I mean when you are operating a business, you know what has to be done.

Q Including the illegal aspects?

A In this case that's the way it worked out, yes.

Q Well, how did you know?

A How did I know what?

Q How did you know what had to be done?

A Well, how else are the certificates going to be used if they are not signed?

Q Did anyone know that they weren't signed

A Yes. Not at the time, no. I had to inform them, I had to tell them that we had to sign, Mr. Hyman and Mr. Rind, yes, at that time.

Q You informed them that they had to be signed?

A Yes.

Q What did Mr. Rind tell you when you gave him that information?

A He didn't tell me anything.

Q Did he just stare at you?

A No, he didn't stare at me.

Q Did he say anything at all?

A No. Because he knew this is what had to be done in order to make the trade.

MR. ANOLIK: Objection to what he knew, your Honor.

THE COURT: Sustained.

Q If he already knew what reason was there for you to tell him in the first place?

MR. BRODSKY: I object to that, your Honor.

THE COURT: Sustained. That's argumentative.

MR. ANOLIK: I don't object, your Honor.

Q Mr. Gallentine, was there ever a time that you spoke to Mr. Rind about using customers' certificates and forging the customers' names and he said something back to

you?

A No.

Q Now, the transaction we have just been talking Mr. Gallentine, reflected in Government's Exhibit 2 through 2-F, produced $28,000 for Packer, Wilbur & Company. Mechanically speaking, what happens to the money?

A The $28,000 was put into our checking account.

Q And thereafter paid out in the regular course of business?

A Yes, to our customers, to stock coming in, being received in which were ultimately for customers, yes.

THE COURT: Did it ever happen while this was happening thata customer came in and wanted his stock?

THE WITNESS: Yes, that's possible, yes. I don't remember if they specifically did, but it would be possible, yes.

THE COURT: Well, who would he mak the inquiry of?

THE WITNESS: The customer, he could have called the back office asking for the person in the back office who would handle the transfer of securities, or he could have called his registered representative. He could have called either one.

THE COURT: But you have no present recollection

of any particular person?

THE WITNESS: No, I have not, your Honor.

Q Directing your attention, Mr. Gallentine, to Government's Exhibit 6 for identification, is that a copy of a Packer, Wilbur record?

A Yes.

Q And is that comparable to Government's Exhibit 2, a copy of a confirmation?

A Yes. That's the same as the other exhibit only for a different trade.

Q Does that also reflect a transaction with Schreiber Bosse with regard to Leasepac?

A Yes, 2,000 shares of Leasepac to Schreiber Bosse.

Q Government Exhibit 6-B, 6-C and 6-D, directing your attention to the customers' signatures on the stock powers, were any of those put on there by you?

A Yes. These two, Robert Bader and Joseph Rignon.

Q By Exhibit No. 6-C and 6-B, is that correct?

A Yes.

Q By the way, there are signature guarantees on each of those, is that correct?

A Yes, that's right.

Q Are those also put in there by you?

A Yes, they are signed by me.

Q Directing your attention to the second sheet of Government's Exhibit 6, can you tell us whether or not Government Exhibit 6-B and 6-C were used to satisfy that transaction?

A Yes.

Q Actually, was Government's Exhibit 6-D also used to satisfy that transaction?

A Yes.

MR. LOWE: The Government offiers Exhibits 6, 6-B, 6-C and also Government's Exhbit 6-A as a record of the Cleveland Trust Company.

MR. BRODSKY: Only the latter is a record?

MR. LOWE: Yes.

MR. BRODSKY: I have no objection.

MR. ANOLIK: No objection.

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Q Mr. Gallentine, Government's Exhibit 6 reflects a sale of 2000 shares of Leasepac Corporation stock to Schreiber, Bosse & Company in Cleveland, Ohio for the price of $28 thousand in August of 1970.

On the first sheet of Government's Exhibit 6 there is reflected the number "1000 out of S/K," and then the number "1000 out of box."

Can you tell us what those references mean?

A Yes. These are copies used for bookkeeping purposes showing that a thousand shares were taken out of safekeeping and a thousand shares were taken out of the box.

Q What stock is in safekeeping?

A Customers' securities.

Q Now, Mr. Gallentine, this $28 thousand for this transaction, again, mechanically speaking, the money went where?

A It went into the checking account.

Q And it was paid out in the ordinary course of business?

A It was paid out in the ordinary course of business.

Q How did this transaction first come to your attention, this August 19th, I guess it was, transaction with Schreiber, Bosse?

slds 2 Gallentine - direct

A I had -- the tickets came through with the rest of the tickets for the day for stock to be delivered.

Q When the ticket was made up or the ticket that you saw to do this transaction, did you have 2000 shares of Leasepac stock that belonged to Packer, Wilbur?

A According to that, no.

Q Did you have any conversation with anyone in the firm about the fact that you didn't have 2000 shares available to be sold?

A No.

Q Yet you yourself made up this delivery, did you not?

A Yes.

Q And among other things you delivered stock to people whose signature was put on the stock transfer by you, is that right?

A Yes.

MR. LOWE: By the way, I guess I neglected to offer Government's Exhibits 6, 6A, 6B and 6C. I didn't have them marked.

xx (Government's Exhibits 6, 6A, 6B and 6C for Identification received in Evidence.)

Q You yourself personally forged the customers' signatures on the certificates and delivered them to the

bank for which Packer, Wilbur got $28 thousand, is that right?

A Yes.

Q How did you know to do it?

A I think we went over that already. I thought we already discussed that.

Q Did you tell anyone what you were doing about that transaction?

A I can't say I told anybody about that transaction, no, I can't say that I did, because I don't remember if I did or if I didn't, and it wasn't necessary for me to tell anybody because, as we explained before, this has already been understood what has to be done.

Q Do you remember giving some testimony about one month ago?

A I was up here and I gave a lot of testimony, yes.

Q And it was about one month ago?

A Yes.

Q As a matter of fact, it was May 3rd, wasn't it?

A If you say it was May 3rd, it was May 3rd.

Q Let me direct your attention to the transcript of that prior occasion starting about the middle of page 29, reading through page 32.

Just read it to yourself.

A If this is what I said, then this is what I said, whatever the questions were that were asked. Then what is the purpose of me reading it again?

Q Mr. Gallentine, you don't ask the questions.

A All right.

Q Will you please read those pages and let us know when you are finished.

A Yes?

Q You have read them?

A Yes.

Q Having read that, does that refresh your recollection with respect to whether or not you had any conversation with Mr. Rind about delivering customers' stock with forged names on it in satisfaction of the transaction reflecte on Government's Exhibit 6?

A Yes. Mr. Rind brought that to me and I told him that we didn't have the 2000 shares, that I had to sign stock powers in order to get it up, in order to accumulate the 2000 shares to make the delivery.

Q Mr. Gallentine, directing your attention to Government's Exhibit 12 for Identification, is that a copy of a Packer, Wilbur record?

A Yes.

Q And like others we have seen, is that a copy of

a confirmation?

A Yes, 10 thousand shares of Robotguard.

Q The handwriting on there, is that yours?

A Yes, I believe so.

Q Does that reflect the numbers of the certificates used to satisfy the particular transaction reflected thereon?

A Yes.

MR. LOWE: The government offers Exhibit 12 in evidence, and with it Government's Exhibit 13, a record of the American Bank & Trust Company; Government's Exhibit 13A, those two entries thereon circled in red; Government's Exhibit 14 for Identification, is a record of the Sterling National Bank, and Government's Exhibit 14A for Identification, also as a record of the Sterling National Bank.

MR. BRODSKY: I have no objection to anything except to 14, and I would like to state my objection, if I can, at the side bar.

THE COURT: Yes.

(At the side bar.)

MR. BRODSKY: My objection to 14A is that, again, it is a bank record, and it is the same objection I had before with regard to how much money there is in a particular bank account, and I just want to note my objection to that part of it, your Honor.

slds 6 Gallentine - direct

THE COURT: Objection overruled.

MR. ANOLIK: I join in the objectio

THE COURT: Yes, of course. Objection overruled.

MR. BRODSKY: Specifically the fact that there is no money in the bank I think is irrelevant to what we are doing here.

(In open court.)

xx (Government's Exhibits 12, 13, 13A, 14 and 14A for Identification received in Evidence.)

BY MR. LOWE:

Q Government's Exhibit 12, Mr.Gallentine, shows the date of August 20, 1970, and then it has a stamped date on it, September 22, 1970.

What does the stamped date refer to?

A From this I would say that it is the date of making the entry of taking 10 thousand shares of Robotguard out of the box and putting it into the draft account.

Q Well, didn't that Robotguard stock go into the draft account on August 20th? Directing your attention to Government's Exhibit 13A.

A Yes.

Q That is the Packer, Wilbur clearance account at the bank, is it not?

A The draft account.

slds 7 Gallentine - direct

Q The draft account?

A Yes.

Q That shows the Robotguard stock going into the bank on August 20th, right?

A Yes.

Q So that September 22nd date could not refer to the date you put the stock in the bank?

A No, I wouldn't say so. It could be a mis -- it could be an error. From this I can't tell.

Q Directing your attention to a further page of Government's Exhibit 13A, the draft account of Packer, Wilbur at the American Bank & Trust, is the September 21st entry showing that the draft bounced back from Sterling Bank unpaid - does that refresh your recollection?

B2

A Oh, yes, 9/22. 9/22 is the date that the draft was returned. This is an entry showing that the stock was returned to us, put into the box and taken out of the draft account.

Q So that, in effect, you never got any money for that transaction except you had the loan of money by the bank for the one-month period?

A We had the use of the funds for one month, yes.

MR. LOWE: Ladies and gentlemen, these documents reflect a sale by Packer, Wilbur of 10 thousand shares of

Robotguard, Inc. stock on the 20th of August, 1970, drafted to the Sterling National Bank for the account of Arthur G. Berkson & Company, Inc.

The record of the Sterling National Bank demonstrates that R.G. Berkson & Company, Inc. is a corporation under the laws of the State of New York of which Robert Berkson was the president and Martin Berkson was the secretary and treasurer; that Robert Berkson and Martin Berkson had the right to sign checks on that account, and that at about the date of the transaction in question, August the 20th, the bank balance was $1000. On August 31 it continued to be $1000. The amount of the transaction was $40 thousand.

BY MR. LOWE:

Q That transaction you have just gone over, the exhibits that reflect it, Mr. Gallentine, the sale of Robotguard stock, 10 thousand shares, in August of 1970, did Packer, Wilbur have of its own 10 thousand shares of Robotguard at the time of this transaction?

A The books and records would show the actual amount of shares that were in our inventory or in the trading position. I don't remember if we had 10 thousand shares in the trading position or not.

Q Well, do you know whose stock was used for this particular transaction?

slds 9 Gallentine - direct

A Yes. This stock happened to be the name of Ephraim Block, which was brought into the firm of Packer, Wilbur by Mr. Hyman. He brought the stock into the firm sometime in early 1970, which date I don't know. It could be anywhere from January through the time that we used the stock.

Q Mr. Gallentine, directing your attention to Government's Exhibit 4B for Identification: Is that a copy of a Packer, Wilbur record?

A Yes.

Q Is that a copy of the receipt from Ephraim Block for the delivery of his Robotguard stock?

A Yes, on this date we received -- this is the bookkeeping date or the entry -- the date of the bookkeeping entry that we received the stock into his account.

MR. LOWE: The government offers 4B in evidence.

MR. BRODSKY: I have no objection.

MR. ANOLIK: No objection.

xx (Government's Exhibit 4B for Identification received in Evidence.)

Q Now, you have just said that this August 20th date on here, which just happens to be the same date as the date on the sale to R.G. Berkson & Company, was the date on which the stock was received into Mr. Block's account?

slds 10 Gallentine - direct

A Yes, that's the date of the entry in order to record the stock being received into his account, yes. I had the stock in my possession sometime before that.

Q And on the very same day that you recorded the stock as being received into Mr. Block's account, you delivered it out on behalf of Packer, Wilbur, not Mr. Block, is that right?

A Yes, in order for the stock record to be in balance, in order to deliver out stock we have to show where the stock came from. So in order for the books and records to be consistent, we received the stock into his account and put the stock into the box so we would have stock to take out of the box in order to make a delivery.

Q Did you have any conversation with anyone at the firm, anyone at Packer, Wilbur, with regard to whether or not you could use that stock in the name of Ephraim Block for transactions for which Packer, Wilbur would get the proceeds?

A When Mr. Hyman gave me the stock he said that the stock belonged to the firm, that Packer, Wilbur, in essence, owned the stock and that we could use the stock, yes.

Now, when I made the entry I received the stock into Ephraim Block's account. I could have just as well received the stock into Packer, Wilbur's trading account, but I re-

slds 11 Gallentine - direct

ceived it into Ephraim Block's account because -- I just can't explain why -- but I was informed by Mr. Hyman that the stock belonged to Packer, Wilbur, so I received the stock into his account, put it into the box and then used it thereafter.

Q By the way, who is Mr. Hyman?

A Mr. Hyman was the president of Packer, Wilbur.

Q To the best of your knowledge, where is Mr. Hyman?

A Mr. Hyman is in Spain.

THE COURT: We will take a five-minute recess at this time. Please don't discuss the case with anybody.

(Recess)

BY MR. LOWE:

Q Mr. Gallentine, showing you Exhibits 1B, 1C, 4C, 9, 11 and 11D, all for Identification: Are these the stock certificates delivered to Packer, Wilbur by Ephraim Block reflected on Government's Exhibit 4B in Evidence?

A Yes, except these two (indicating).

Q Except for 9 and 11D; is that right?

A Yes.

MR. LOWE: The government offers 1B, 1C, 4C and 11 in evidence.

MR. BRODSKY: I have no objection.

slds 12 Gallentine - direct

MR. ANOLIK: No objection.

(Government's Exhibits 1B, 1C, 4C and 11 for Identification received in Evidence.)

Q Government's Exhibit 7C for Identification - is that also Ephraim Block's Robotguard stock delivered into Packer, Wilbur?

A Yes, these are copies of the certificates.

MR. LOWE: The government offers 7C in evidence.

MR. ANOLIK: I have no objection.

MR. BRODSKY I have no objection, your Honor.

(Government's Exhibit 7C for Identification received in Evidence.)

Q Directing your attention to Government's Exhibit 4A for Identification, is that a Packer, Wilbur record?

A Yes.

Q And is that a copy of a confirmation of a sale?

A Yes, to the First Philadelphia Corp. for 15 thousand shares of Robotguard.

Q And directing your attention to Government's Exhibit 4 for Identification, is that also a copy of the same thing?

A Yes, yes.

Q And was the original of that document mailed to

slds 13 Gallentine - direct

the First Philadelphia Corporation?

A Yes. The original was mailed to the First Philadelphia.

Q And directing your attention to Government's Exhibit 4D for Identification, can you identify that document?

B3 A Yes. This is a copy of a trade from First Philadelphia to Packer, Wilbur, Packer, Wilbur buying 15 thousand shares of Robotguard from First Philadelphia.

Q Whose writing is on that document?

A The "received"?

Q Right.

A That's received for Packer, Wilbur, Hoffman.

Q Who is that?

A He was a clerical employee.

Q And do these three documents all relate to the same stock?

A Yes.

MR. LOWE: The government offers Exhibits 4, 4A and 4D in evidence.

MR.BRODSKY: I have no objection.

MR. ANOLIK: I have no objection, your Honor.

xx (Government's Exhibits 4, 4A and 4D for Identification received in Evidence.)

slds 14 Gallentine - direct

Q Government's Exhibits 4 and 4A reflect the sale on August 21, 1970, by Packer, Wilbur of 15 thousand shares of Robotguard stock at $4 a share to First Philaldelphia and the repurchase of the same stock a few days later by Packer, Wilbur from First Philadelphia.

On or about August 21 when this transaction was initiated did you have any conversation with Mr. Rind about the transaction?

A Mr. Rind told me that we were going to make a trade with First Philadelphia, which is this trade.

Q What, if anything, did he tell you about the transaction?

A That we were going to sell -- that we were selling the 4,000 shares and that we were going to buy it back or we would be buying it back.

Q Now, when you had the sale of the First Philadelphia, did you deliver the stock to your bank for further delivery to First Philadelphia?

A Yes, the stock was taken to the American Bank & Trust Company for them to make a delivery for us.

Q And at the time you delivered it to the bank, did the bank extend credit to Packer, Wilbur for the amount of the transaction?

A Yes. They would advance us -- make a loan or advance to us the proceeds of the delivery.

Q When you delivered the stock to the bank, did you deliver anything to them indicating that Packer, Wilbur had already agreed to buy back that stock in a short period of time?

A No.

Q Mr. Gallentine, directing your attention to Government's Exhibit 7 for identification, can you identify that document?

A Yes. This is 5,000 shares of Robotguard being

loaned to Mr. Ab Katz on 9/2.

Q This reflects a delivery to Mr. Katz of 5,000 shares of Robotguard stock; is that right?

A Yes.

MR. LOWE: The Government offers Exhibit 7 in evidence.

MR. BRODSKY: I have no objection.

MR. LOWE: And Exhibits 7-A and 7-B as records of the Atlantic Bank of New York.

MR. BRODSKY: I have no objection.

MR. ANOLIK: No objection to the first exhibit. No objection.

(Government's Exhibits 7, 7-A and 7-B are received in evidence.)

BY MR. LOWE:

Q Government's Exhibit 7, Mr. Gallentine, reflects the delivery of 5,000 shares of Robotguard stock in the name of Epsram Block to Mr. Abe Katz on September 2, 1970.

How did that transaction come to your attention?

A Mr. Rind said that we were going to give to Mr. Katz 5,000 shares, loan to Mr. Katz 5,000 shares.

Q Did he say anything about what, if anything, Mr. Katz was going to do?

A He was going to get a loan or he was going to

bring some money into the firm with the stock.

Q So that Mr. Katz was going to borrow money and give the money to the firm and the firm was giving him the stock as collateral?

A Yes, that was the procedure.

Q To whom did you give the certificates that were delivered to Mr. Katz according to this record?

A Mr. Rind.

Q Directing your attention to Government's Exhibit 5-B for identification, is that a copy of a Packer, Wilbur record?

A Yes.

Q And is that a receipt of stock certificates for the account of Mr. David Lipschitz?

A Yes.

Q That's Robotguard stock?

A Yes, 6,000 shares.

Q Now, directing your attention to Government's Exhibit 5 and 5-A for identification, are those copies of Packer, Wilbur records?

A Yes.

Q Are those copies of confirmations?

A These are copies of confirmations of a sale to First Philadelphia Corp. of 6,000 shares of Robotguard.

rd ja 4 Gallentine - direct

Q And is the stock delivered for the sale reflected by Government's Exhibits 5 and 5-A for identification the stock reflected on Government's Exhibit 5-B for identification?

A Yes.

MR. LOWE: The Government offers 5, 5-A and 5-B in evidence.

(Pause)

MR. BRODSKY: I have no objection.

(Pause)

MR. ANOLIK: No objection.

MR. LOWE: The Government also offers 5-E as a record of Goodbody & Company.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

(Government's Exhibits 5, 5-A, 5-B and 5-E are received in evidence.)

Q Mr. Gallentine, Government's Exhibit 5-B shows the receipt of Robotguard stock of 6,000 shares for the account of David Lipschitz, August 26, 1970. Then it shows the sale of that stock on the 18th of September of 1970, the same stock certificates, for the account of Packer, Wilbur to First Philadelphia Corporation.

Did you have any conversation with anyone at

at Packer Wilbur regarding the use of Mr. Lipschitz' stock in this fashion?

A Yes, Mr. Hyman had informed me that this stock also could be used, the same as Mr. Ephram Block's stock.

Q When did he tell you that?

A Sometimes prior to that date.

Q Prior to the date you used it?

A Prior to the date that we used the stock, yes.

Q And after the date you got it? You received the stock August 26th.

A He hadinformed me that -- I don't recall exactly when, but he had informed me about this stock of Lipschitz. I don't know how or what, but I had known that this stock was coming over from Boodbody and that we could use the stock. It belonged to the firm.

Q Mr. Hyman was the one who told you that?

A Yes.

Q Mr. Gallentine, directing your attention to Government's Exhibit 8-B for identification, is that a Packer, Wilbur record?

A Yes.

Q And is that a copy of a confirmation?

A This is a copy of a confirmation of sale, 2500 shares of Leasepack to Schreiber Bosse.

rd ja 6 Gallentine - direct

MR. LOWE: The Government would offer 8-B in evidence together with 8-C as a record of the American Bank & Trust Company for the same transaction.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

* * * (Government's Exhibits 8-B and 8-C are received in evidence.)

BY MR. LOWE:

Q Directing your attention, Mr. Gallentine, to Government's Exhibit 3-B for identification, can you identify that document?

A Yes. This is a bookkeeping record of Packer, Wilbur.

Q What kind of a record is it?

A It is a receive and deliver blotter and also used for cash receipts and cash disbursements.

Q And specifically directing your attention to that portion of the exhibit circled in red, does that reflect the delivery of certain Leasepac stock?

A Yes, this reflects a delivery of 2500 shares to Schreiber Bosse.

Q On or about the date reflected thereon?

A Yes.

MR. LOWE: The Government offers 3-B in

rd ja 7 Gallentine - direct

evidence, together with Exhibit 3 as again, on both of them those portions outlined in red as a record of Schreiber Bosse.

MR. BRODSKY: I have no objection.

MR. ANOLIK: No objection.

(Government's Exhibits 3 and 3-B are received in evidence.)

Q Mr. Gallentine, Government's Exhibit 8-B reflects the sale of 2500 shares of Leasepack stock to Schreiber Bosse with a delivery date of December 8th.

Government's Exhibit 3-B reflects the delivery on December 8th of 2500 shares of Leasepac Corporation stock to Schreiber Bosse.

How did that transaction first come to your attention?

A Mr. Rind had said that we were going to make a trade with Schreiber Bosse, he was making a trade with Schreiber Bosse for that number of shares.

Q At the time he told you that did you have 2500 Leasepac certificates or certificates representing 2500 shares that belonged to Packer, Wilbur?

A No.

Q Did you have any conversation with Mr. Rind about that fact?

A Yes. I mentioned to him that we didn't have those shares available, the certificates accumulating 2500 shares.

Q What did he say to you?

A He said that wehave to try to find the 2500 shares and do whatever we have to do in order to get up to 2500 shares.

Q And in that connection did you deliver out customer stock certificates with forged signatures?

A If it reveals that we did, yes.

THE COURT: Are you going into another transaction now?

MR. LOWE: Yes, your Honor.

THE COURT: I think this is a convenient time to stop it. You still have a number of these documents to put in, have you not?

MR. LOWE: A fair amount, yes, sir.

THE COURT: We will try to get you out before the subway rush.

Please don't discuss this case in the meantime. Keep your minds open and return tomorrow morning at ten o'clock.

You are excused.

(Adjourned to June 4, 1976, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Linda Sussman	2	4	5	
Loretta Ottinger	6	7		
Eugene Pugliese	10	20	22	25
			26	27
Anthony Salamone	29	30		
James Gallentine	31			

EXHIBIT INDEX

Defendant Rind	Identification	In Evidence
A	49	

Government

15,16,17,18,19,19-A,19-B	49
2-E, 2-F	54
2,2-A through 2-D	53
12,13,13A,14,14A	67
4B	70
1B,1C,4C,11,7C	73
4,4A,4D	74
7,7-A,7-B	77
5,5-A,5-B,5-E	79
8-B,8-C	81
3,3-B	82

UNITED STATES OF AMERICA

v. 75 CR 608

ROBERT BERKSON and MAURICE RIND

June 4, 1976
10:00 a.m.

New York, New York

(Trial resumed)

(In open court; jury not present)

MR. ANOLIK: Your Honor will recall that my coient is in the process of attempting to collect certain debts due to him. He has still not collected them.

Your Honor indicated you would continue to treat him as an informa pauperis client until that time. The last time you did order the court reporters to supply us with the transcript.

THE COURT: I want an affidaivt from him indicating exactly what he is talking about. I'm not satisfied purely and simply on a statement like that, which I don't think he said anything about this on the record.

MR. ANOLIK: On the last trial he did supply it.

THE COURT: But he hasn't brought that up to date?

MR. ANOLIK: No, your Honor. I have seen notes from him personally. I have personally seen them where, if the notes are valid, and I assume they are, there is money to them, and he will eventually collect it.

THE COURT: I want that affidavit brought up to date before I would decide on it.

MR. ANOLIK: I just wanted to disclose that, your Honor.

(Jury present)

J A M E S G A L L E N T I N E, resumed.

DIRECT EXAMINATION (Continued)

BY MR. LOWE:

Q Mr. Gallentine, directing your attention to Goverment's Exhibit 1-A for identification, is that a letter which you sent to the Irving Trust Company?

A Yes.

Q Does it bear your signature on the last page?

A Yes.

Q Directing your attention to Government's Exhibit 1, are those all copies of Packer, Wilbur records?

A Yes, they are.

Q Are those all copies of the confirmations?

A Yes.

Q And do those reflect the delivery of stock to

the customers of Packer, Wilbur?

A Yes, they do.

Q Directing your attention to Government's Exhibit 1-D for identification, is that a Packer, Wilbur record?

A Yes, it is.

Q What kind of a record is it?

A This is a transfer record, a record of stock that has been placed in transfer for customers.

Q And specifically are Government's Exhibits 1, 1-A and 1-D for identification related in the sense they relate to the same stock?

A Yes.

MR. LOWE: The Goverment offers 1, 1-A and 1-D in evidence.

(Pause)

MR. BRODSKY: I have no objection.

(Pause)

MR. ANOLIK: No objection.

* * *

(Government's Exhibits 1, 1-A and 1-D are received in evidence.)

THE COURT: Mr. Gallentine, in reference to 1-A, how was that transmitted to the Irving Trust Company

THE WITNESS: By hand. I believe by hand. I

can't say for sure.

MR. ANOLIK: Your Honor, I would strike lthe answer in view of the fact he is not sure.

THE COURT: Well, I will let it stand, but the jury understands perfectly well that answer does not establish whether it was mailed or whether it was not mailed.

BY MR. LOWE:

Q What was your practice in sending negotiable stock certificates to the bank for transfer?

A If they were local banks, it would be by hand.

THE COURT: So in those other instances where you were talking about Philadelphia and other cities, you say that those were sent by mail?

THE WITNESS: Yes. New York and Jersey City would be by hand.

THE COURT: All of the rest of the places you have named during the course of this testimony would be sent by mail?

THE WITNESS: Yes.

Q And with regard to the mail, everytime there was a transaction for a customer, was a confirmation of that transaction mailed to the customer?

A Yes.

Q Now, Mr. Gallentine, Government's Exhibit 1-A is a letter from you to the Irving Trust Company, is that right?

A Yes.

Q And it's a letter delivering to them certain stock certificates, asking them to transfer them -- sell them and issue new certificates in the name of Various customers of Packer, Wilbur; is that right?

A Yes, that's right.

Q Among the stock certificates that were delivered to the bank for that purpose were Government's Exhibits 1-B and 1-C in evidence, the stock in the name of Ephraim Block.

As of the time you wrote that letter, Mr. Gallentine, and I believe it was February 26, 1971 -- is that right?

A Yes.

Q As of the date of that letter, what was the status of Packer, Wilbur's business?

A Packer, Wilbur had ceased operating, had ceased doing brokerage business. We were in the process of delivering all securities to our customers.

Q Did you have any conversation with anyone at the firm about whether or not it was proper to use

Mr. Block's stock at that time to satisfy Packer, Wilbur's obligations to its other customers?

A No, not at this time. That had already been established prior.

THE COURT: I don't quite understand what you mean by that, Mr. Gallentine.

What had been established prior?

THE WITNESS: The use of Mr. Block's stock.

THE COURT: With whom?

THE WITNESS: With Mr. Hyman. This we discussed yesterday. When Mr. Hyman turned over this stock to me, it was with the thought that it belonged to Packer, Wilbur, that I could use it or it could be used.

(Continued on next page)

BY MR. LOWE:

Q That's all it was; then it was just that Mr. Hyman told you that?

A Yes, that's right.

Q You didn't speak to Mr. Block about it, did you?

A No.

THE COURT: Well, did you ever speak to him at any later time about it?

THE WITNESS: No.

Q By the way, Mr. Gallentine, when stock was issued for Packer, Wilbur what name was used by the company to be on the stock certificates?

A Pack, Wil Co.

Q And that was sort of a nominee name?

A That is the nominee name for Packer, Wilbur & Company.

Q Did there come a time, Mr. Gallentine, when you received for Packer, Wilbur certain stock certificates representing a stock dividend by Leasepac Corporation?

A Yes.

Q Do you recall when that was?

A Sometime in -- I believe it was sometime in September 1970.

Q Directing your attention to Government's Exhibit 27 for Identification, Mr. Gallentine, is that a copy of the letter you received with the delivery of the dividend certificates?

A Yes, this would be a copy.

MR. LOWE: The government offers Exhibit 27 in evidence, and also Government's Exhibit 27A for Identification as a record of the Irving Trust Company, that portion marked in red.

THE COURT: While the lawyers are looking at that, there are two other lawyers in another case I have to speak to.

Please excuse us while we go over to the side bar.

(Pause)

MR. ANOLIK: May we step up to the side bar for a moment?

THE COURT: Yes.

(At the side bar.)

MR. ANOLIK: Your Honor, I have inquired of Mr. Lowe, and I have no reason whatsoever to doubt his word about the fact that some of his witnesses are sitting in the courtroom. He tells me that they are not really relevant to Mr. Gallentine's testimony. However, of course,

we can't really determine --

THE COURT: Who are they, so-called victims?

MR. LOWE: Mostly customers, your Honor.

THE COURT: So-called victims.

MR. ANOLIK: So-called, but there are a couple of people who are not customers.

MR.LOWE: Apparently they were outside this morning, and Mr. Beneducci told me this morning that they couldn't stand in the hallway, and there isn't any place else for them to go, and their testimony is simply, you know, as we had it at the last trial, whether the signatures are purportedly theirs or not.

MR. ANOLIK: I appreciate that. But what I am concerned about is this, your Honor: If Gallentine gives testimony incriminating either my client or Mr. Berkson, it may channel the thinking of these witnesses into areas where perhaps they wouldn't have gone into. That is the only point.

THE COURT: I don't know. It seems to me if that's all they are going to do is state -- we heard the testimony last time -- I don't know what more they can say.

MR. ANOLIK: I am not concerned about the customers.

THE COURT: Well, that's what he said. Is there

anybody here other than customers?

MR. ANOLIK: Mr. Schreiber --

MR.LOWE: If he is in the courtroom, we can just tell him to leave the courtroom.

THE COURT: All right, everybody except customers will be ordered to leave the courtroom. We don't have to make an announcement.

MR. ANOLIK: I am just concerned about non-customers.

THE COURT: Okay.

(In open court.)

THE COURT: All witnesses in this case step outside upon order of the Court. The clerk will please show them a room where they can wait until they are called.

xx (Government's Exhibits 27 and 27A for Identification received in Evidence.)

BY MR. LOWE:

Q Mr. Gallentine, Government's Exhibit 27 in Evidence, the letter forwarding the stock dividend in Leasepac to Packer, Wilbur is dated September 11, 1970.

Is that at or about the date you received this stock dividend?

A Yes.

Q At about that time did you have a conversation

with Mr. Berkson regarding the stock dividend?

A Yes. Sometime after that I informed him that we had received the -- the dividend had been received, and that there would be a number of customers that would not receive the dividend directly because they were not stockholders of record, as we had not had this stock in their name.

Q Did you tell him anything else at that time?

A No.

Q Well, did you tell him anything about why the stockholders were not stockholders of record?

A No, only that -- no, I didn't mention anything; only that they weren't stockholders of record, which is a common practice --

Q Mr. Gallentine, did you tell Mr. Berkson at that time that the reason they weren't stockholders of record is that you had used their stock and it might have already been transferred out of their names?

MR. BRODSKY: I object, your Honor.

THE COURT: Overruled.

A I can't honestly remember whether I did say that or not.

Q Directing your attention to page 80 of the record of your testimony at the prior time you testified,

read that page quietly to yourself.

A Yes, yes, I said that --

Q Have you read it?

A Yes.

Q Having read it, does that refresh your recollection about the substance of your conversation with Mr. Berkson about the stock dividend?

A Yes, that I mentioned to him that we had to use some of the customers' securities.

Q What did Mr. Berkson say to you when you told him that?

A He mentioned to keep a record of it so we would know who was entitled to the dividend, who would be entitled to their dividend.

Q Do you recall anything else he said to you on that occasion?

A No.

Q Directing your attention to page 81 of the transcript of your testimony on a prior occasion, the first line. Just read it quietly to yourself.

A He said he was --

Q Just read it.

Having read that, Mr. Gallentine, does that refresh your recollection as to --

A He said he would speak --

Q Just listen to the question and answer it.

The question is: Does that refresh your recollection as to whether or not Mr. Berkson said anything else to you? Yes or no?

A Yes.

Q What else did he say to you at that time?

A He said he would speak to Mr. Rind about it.

Q Now, Mr. Gallentine, apart from the conversation you just told us about with Mr.Berkson, did you have any other conversations with him regarding the use of customers' securities for the benefit of your firm?

A No.

Q Are you sure of that?

A Yes.

MR. BRODSKY: May we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. BRODSKY: I know what is coming from the last trial, obviously, and I think it is important for me to note my objection early right now, Judge, before this starts.

Obviously Mr. Lowe is going to now attempt to do two things with Mr. Gallentine, A, impeach him with his

prior grand jury testimony, and, B, as I understand it -- and correct me if I am wrong, Mr. Lowe -- I believe he is also going to offer his prior grand jury testimony, at least in certain parts that we had during the last trial as affirmative evidence in the case.

B2 THE COURT: I already ruled on it at the last trial. I still feel the same way about it.

MR. BRODSKY: May I make my objection so we have a record in this trial, because we won't have it otherwise.

THE COURT: Yes.

MR. BRODSKY: It is one thing to use this testimony for impeachment purposes, and in that regard I have no objection; but when we start to use this kind of testimony as affirmative evidence, my objection very specifically is this: The testimony before the grand jury, particularly the portion where Mr. Gallentine is asked: Was Mr. Berkson aware that customers' securities were being used?, questions like that, it is a question which if asked at this or any other trial, with lawyers present and objections able to be made, it would not come into evidence; you couldn't get it in if he asked that question.

Now, I don't believe that Rule 801 of the new Federal Rules which we are talking about here, as I understand it, was ever designed to permit the government to go

before the grand jury, where there are no lawyers on the other side, ask questions which would be improper at a trial, get the evidence in before the grand jury, then use the grand jury testimony, which would be improper at a trial as affirmative evidence in the course of the trial.

So, as I say, it is kind of a backward way of getting in evidence. It is not simply a matter that now I have the witness here and I can cross-examine him and ask him all those questions. That would be fine if this testimony came in only for purposes of impeachment, then I could on my own cross-examination find out what it is all about and see if it is really consistent. But, your Honor, when you let it in as substantive evidence, that's quite a different story.

THE COURT: Well, you have the opportunity before this jury to bring this fact out, that those questions were asked in this way, and you could well argue on summation that, actually, he is representing to interpret Berkson's mind or his mental operations, and it seems to me that that would be sufficient under the circumstances, because they hear him here, and they know exactly what his answers are her.

MR. BRODSKY: I understand; but what I'm saying is that we have Rules of Evidence; we have ways of asking

questions. You can't say to a witness, as I understand it, "Mr. Gallentine, was Berkson aware of the fraud?" You could do that before the grand jury, with nobody around, and he could say "Sure he was." But when you use that as affirmative, substantive evidence, the government can use it to make out a prima facie case --

THE COURT: I would reserve on that aspect of it. It is clearly allowable for impeachment, so I will take it at this time, and I will take care of it on the charge.

MR. ANOLIK: The defendant Rind joins in the objection.

THE COURT: The same ruling. And if you can come up with any case that will illuminate the point, I am prepared to be illuminated.

MR. BRODSKY: I must tell you, it's a new rule.

THE COURT: Yes, and I imagine you looked into it, because it is a change in the Second Circuit, and it is a change away from the strict rule of the Second Circuit, and it seems to me that the whole object of this exercise or changing of these rules is to get as much evidence in the case as you can, not to keep evidence out, and this is evidence of his opinion of what Berkson knew.

I am just saying that if you come across any cases that you think will help me, then I will rule on it and take

care of it on the charge.

MR. BRODSKY: I think I ought to protect my record in this sense. I think I did say I would have no objection if it is used for impeachment purposes. I am not all that clear that it should even be used for impeachment purposes, so let me object --

THE COURT: I have no wonderment about that.

MR. BRODSKY: Well, let me protect my record and make my objection on that score too.

THE COURT: Yes. And you, Mr. Anoli, of course have now changed your objection to conform to his objection?

MR. ANOLIK: Your Honor, by a startling coincidence that happens to be the case.

THE COURT: Very well.

(In open court.)

BY MR. LOWE:

Q Mr. Gallentine, I want to direct your attention to Government's Exhibit 3501 for Identification, specifically those pages marked SA2 and SA3.

I want you to read them to yourself and tell us when you are finished.

A Ye?

Q Have you read them?

A Yes.

Q Having read those two pages, Mr. Gallentine, does that refresh your recollection as to whether you had any other conversations with Mr. Berkson about the unauthorized use of customers' securities?

Q No.

Q And is it your testimony now that the only conversation you had with him on that subject was the one you testified to in relation to the stock dividend?

A Yes, yes.

Q Mr. Gallentine, on June 4, 1973, did you appear before a grand jury in this district?

A Yes, I did.

Q On the occasion of your appearance were you administered an oath?

A Yes, that's right.

Q And did you take that oath?

A Yes.

Q Was that oath the same oath you took when you took the witness stand yesterday?

A Yes, that's right.

Q And you were asked questions before the grand jury and you gave answers to the questions; is that correct?

A Yes.

Q Beginning in the middle of page SA-2 of Government 3501 for identification --

MR. BRODSKY: I have already noted my objection to this, your Honor.

THE COURT: I instruct the jury at this poin in this trial, at this point in the trial I'm only allowing this for one purpose, and that is for impeachment purposes as to his credibility.

If you find that the answers given here are inconsistent with the answers given at that time, and you find that that inconsistency is a material inconsistency, then you may use that for the purpose of determining the credibility of this witness.

The Government has a right, even though they have called this witness, to impeach the witness.

If I have further rulings to make in this area, and if it becomes necessary forme to do so, I will further instruct you at a later time.

Q Beginning in the middle of the page of SA-2, Mr. Gallentine, were you asked the following questions and did you give the following answers to those questions under oath before the grand jury on June 4, 1973:

"Q Now, apart from Mr. Rind, did you have any conversation with either of the principals of the company

with regard to the use of customers' Leasepac stock for the benefit of the firm?

"A No, no. Mr. Rind just handled -- Mr. Rind set up the transactions, be they sales or loans, and he followed through. Mr. Berkson and Mr. Hyman were aware, yes, but my contact was with Mr. Rind.

"Q Well, you say that Mr. Hyman and Mr. Berkson were aware. Could you tell us how you know Mr Hyman and Mr. Berkson were aware of what was going on?

"A Well, I had conversation with them as to how we got through the day cash-wise, what we had to do in order to get up the amount of cash necessary.

"Q In other words, from time to time you would tell them that Mr. Rind arranged for the transactions in stock to generate some cash and you provided customers securities to cover that transaction, and that is how you got the cash on a particular given day?

"A Yes, yes.

"Q And you would explain to them that you actually went through the process of the unauthorized use of customers' securities for this purpose?

"A Yes, yes. I didn't state specifically what accounts or which customers were used but generally, just generally speaking, we were using customers' securities.

"Q And both Mr. Berkson and Mr. Hyman knew about that?

"A Yes.

"Q And the reason you can say that is that you specifically recall telling them about what was going on?

"A Yes, I spoke to them about it."

Were you asked those questions and did you give those answers under oath before the grand jury on June 4, 1973?

A Yes.

THE COURT: Mr. Gallentine, are you saying that you don't remember a single question and answer in that whole two pages?

THE WITNESS: No, I remember those answers -- the questions, yes.

THE COURT: And you remember the answers you gave?

THE WITNESS: Yes, I remember the answers I gave, yes.

THE COURT: How do you explain the fact that here you say you never spoke to Berkson except that one time?

THE WITNESS: I really can't explain that situation other than I was trying -- trying to be helpful

with Mr. Lowe,and having worked with him, going back and reconstructing or going over the mechanics of these transactions, I formulated in my mind what may have happened. But that is not exactly the way it did happen.

I thought we were getting into that yesterday, of just exactly what or how we were operating. We were trying to stay in business. We had these trades made with different broekrs. It was more or less a general understanding with Mr. Hyman and Mr. Rind; Mr. Rind, because he was doing the Leasepac, he had the Leasepac stock; Mr. Hyman, because he brought in Mr. Block's Robotguard stock.

After that there was never any serious discussion as to what was done or what wasn't done.

These trades came through. I went ahead and did what was necessary in order to make delivery and get the cash that we needed for the day

THE COURT: Are you saying, then, that during the month of August, when almost every day the brokerage house was in default, sometimes by hundreds of thousands of dollars, that you never discussed the fact of how you did that during the course of the next day or the day after with anybody in the firm?

THE WITNESS: Yes, that's what I'm saying. Not every day, no, it wasn't necessary.

THE COURT: I'm not saying you discussed it every day, but at anytime during that month of August when there was this condition in the brokerage firm, are you saying you never discussed it with the principals there, the people that were there?

THE WITNESS: The only thing that I said is that we were able to get through the day.

THE COURT: Who would you say that to?

THE WITNESS: Mr. Rind, Mr. Hyman, if he were there, and I would mention it to Mr. Berkson if he were available.

I mean, we were a small business, a small brokerage house, and it wasn't really that necessary for me to discuss it.

THE COURT: Because, as you put it in your answer in the grand jury, you felt they were aware of it?

THE WITNESS: They were aware of our cash situation, yes.

THE COURT: What I am trying to find out is what you mean by, "They were aware of it." You mean you had these discussions with them in reference to the way you were able to bring the cash into the bank account?

THE WITNESS: I would mention to them, whoever was around, that we needed so much cash.

THE COURT: That's what you mean by the word "aware"?

THE WITNESS: Yes.

THE COURT: "You made them aware of"?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. LOWE:

Q Mr. Gallentine, the answers you gave in the grand jury which were just read to you and which you have said are the answers you did give speak about being aware of something more than the cash shortage, do they not?

MR. BRODSKY: Objection, your Honor.

THE COURT: I will allow it.

A Yes.

Q They speak in terms of being aware of the unauthorized use of customers' securities; isn't that right?

A Yes, yes.

Q And it also says in that grand jury testimony that you said that you told Mr. Berkson and Mr. Hyman that you were using customers' securities without authorization?

MR. BRODSKY: I object, your Honor.

THE COURT: He has already answered that. That has been answered.

If you want to pose a question based on that,

you may. But simply repeating it is not going to help any.

Q My question, Mr. Gallentine, is your explanation now at this trial that you did not tell them about it?

MR. ANOLIK: Who is "they"?

A It wasn't necessary to tell them about it.

Q What has happened, Mr. Gallentine, between the time you testified in the grand jury and now to make your testimony different?

A I have been able to go back and understand why I made this testimony. I was trying to -- evidently I was trying to -- trying to -- trying to make a picture in my mind, I guess. I don't know. I can't say.

Q Mr. Gallentine, Packer, Wilbur went out of business, as you said, basically in February of 1971, and closed up completely in March of 1971; is that right?

A Yes. The trustee came in, I believe, sometime in March or early April, yes.

Q Now, Mr. Gallentine, what was your next employment after you left Packer, Wilbur?

A I went with A. J. Carno.

Q What kind of a business was that, Mr. Gallentine?

A Stock brokerage.

Q Same kind of business as Packer, Wilbur?

A Yes.

Q And what job did you get at that firm?

A As a cashier.

Q Same job you had at Packer, Wilbur, right?

A Yes.

Q Who got you that job?

A Mr. BErkson was instrumental in my obtaining the job.

Q How long did you work in that job?

A I worked until A. J. Carno closed up.

Q When?

A December of 1974.

Q Who was your boss at that fimr?

A Well, when I first went with A. J. Carno, Irving Levine and Melvin Meckler were the principals. A year and a half after that, Mr. Al Weineman came in as controller.

Q Who was your ultimate boss at that firm?

A As of what date?

Q The entire period of time you were there.

Q My ultimate boss when I first went with Carno for two years, Mr. Meckler and Mr. Levine were the principals. They were president and secretary. I don't know what offices they had, but they were the principals

at the firm.

Q Then did somebody else become a principal?

A Mr. Berkson took over the management sometime later.

Q Mr. Berkson was your ultimate boss at that point?

A Yes.

Q And even after A. J. Carno went out of business, you continued from time to time to do some work relating to the books and records of that firm; isn't that right?

A Yes, of course.

Q And you got paid for that, did you not?

A Yes.

Q And it was Mr. Berkson who authorized the payment to you, wasn't it?

A Yes.

Q And at thattime thatwas one of your sole sources of income, wasn't it?

A No. I was employed at that time by Sherwood Securities Corporation.

Q How long did that last?

A Until October, until October 1975.

Q How many times, Mr. Gallentine, in the last four weeks have you spoken to Mr. Berkson?

A I would say three to four.

Q And did there come a time in the last four weeks, Mr. Gallentine, that Mr. Berkson had an appointment here in the courthouse?

A I don't know.

MR. BRODSKY: I object to this, your Honor.

THE COURT: Overruled.

Q Did there come a time in the last four weeks, Mr. Gallentine, when you did not have an appointment in the courthouse and you accompanied Mr. Berkson to this courthouse?

MR. BRODSKY: I object, your Honor.

THE COURT: Overruled.

A No. At this courthouse?

Q This courthouse.

A And I accompanied Mr. Berkson?

Q To this courthouse; within the last four weeks at a time when your presence was not required here?

A No.

MR. BRODSKY: May I come up for a minute?

THE COURT: Yes.

(At the side bar)

THE COURT: Offer of proof, is that what you want?

MR. BRODSKY: No, your Honor.

I want to make an objection to this testimony, Judge. We are treading on very dangerous ground here. Berkson did come to the courthouse --I don't know whether Gallentine accompanied him -- unfortunately, for he was indicted on a tax evasion case. The case got some publicity in the New York Times and elsewhere. I just think that whatever the benefit --

THE COURT: I'm aware of that area, but I don't know that he is going into anything involving that.

MR. LOWE: That's the occasion I'm going into. I have very carefully not gone into the subject.

The fact is I have witnesses who (a) will testify that they saw Gallentine carrying Berkson's bag into the courthouse, and they saw Gallentine with Berkson in Part 1 when Berkson was there to be arraigned on the indictment. One of my witnesses is tadning to your left right now.

MR. ANOLIK: No, he is not. No one is standing to the left.

THE COURT: You.

MR. ANOLIK: Me? I saw him come in but I don't know whether specifically he accompanied him into the building.

THE COURT: Make sure there is no testimony or the questions are asked in such a way that you don't bring this other aspect of the case into it at all.

MR. LOWE: Absolutely.

MR. BRODSKY: I would ask your Honor to exclude it. He admits he saw Gallentine several times in the last month. What is the difference whether he saw him in the courthouse or not?

THE COURT: He said he spoke to him. That could be on the phone.

MR. BRODSKY: What's the difference if he saw him in the courthouse or not?

THE COURT: It still shows they have a friendship between them.

MR. BRODSKY: He doesn't deny it.

THE COURT: That's true, but I think he is entitled to show him times and what, if anything, was said at that time.

MR. BRODSKY: I note my objection.

THE COURT: Make sure we don't get into this other area.

MR. BRODSKY: I do note my objection.

THE COURT: I am going to allow leading questions to make sure we don't get into that area.

The exception is noted, and we will note yours, Mr. Anolik, too.

(In open court)

BY MR. LOWE:

Q Mr. Gallentine --

THE COURT: Just a minute, Mr. Lowe.

Mr. Gallentine, this next series of questions which areasked of you, I want you to answer yes or no and don't volunteer any information unless you are instructed to do so or unless the question calls for it.

Q Mr. Gallentine, directing your attention to a day one week ago from yesterday, didyou come to the courthouse with Mr. Berkson on that day?

A No.

Q How about a day two weeks ago from yesterday?

A Yes.

Q You are absolutely sure of that?

A Yes. I didn't come to the courthouse with Mr. Berkson. I may have met him here, but I didn't come with him.

Q All right. Were you together with Mr. Berkson in this courthouse either one week ago yesterday or two weeks ago yesterday?

A Yes.

Q Were you in this courthouse because your presence was required by anyone?

rd ja 15 Gallentine - direct

A Mr. Anolik had requested me to be here, yes. You are talking about the last trial?

Q [illegible]. Just answer yes or no.

THE WITNESS: I'm sorry, your Honor.

THE COURT: Come to the side bar. I want to make sure that we know where we are going here.

(At the side bar)

MR. ANOLIK: I want to make it clear that I subpoenaed him here during the last trial. My client has nothing to do with him.

THE COURT: In these answers to these questions I don't want you to refer to this next indictment that he was indicted on.

You are aware he has been indicted on a tax case?

THE WITNESS: No, I don't.

THE COURT: Don't talk so loud because the jury can hear you.

Mr. Anolik subpoenaed you?

MR. ANOLIK: Your Honor directed that he come back.

I think I gave you a subpoena.

THE WITNESS: You just asked me.

MR. ANOLIK: When he finished his testimony we said that we wanted him to remain in the event we had

to use him for further examination, and he said he would.

THE COURT: Weren't you hear the day he was arraigned on the tax case?

THE WITNESS: No.

THE COURT: What is your recollection on it?

MR. ANOLIK: I saw him in the building, your Honor.

MR. BRODSKY: On the day of the tax case?

MR. ANOLIK: I don't know if it was the tax case.

THE COURT: I don't think you need all of this on the record.

(Discussion off the record)

THE COURT: Let the record show I am directing him not to answer any question which in any way refers directly, tangentially or otherwise with the other matter which defendant Berkson has before this Court, namely, an alleged tax violation.

MR. BRODSKY: Let me note my objection, if I may.

We are getting into a very sensitive area. I understand your direction, but why should we let this jury speculate as to why Mr. Berkson was required to be in court several weeks ago?

THE COURT: He didn't ask him whether Berkson was required to be here.

MR. BRODSKY: He said was Gallentine required to be here. Why should we let the jury speculate, particularly in light of the fact thatwe are talking about some cumulative evidence where the witness has said that he had seen Berkson several times since the last trial.

What are we adding in light of what we may lose here in terms of prejudicial evidence?

THE COURT: I will allow some inquiry. If that is an objection, I overrule it.

MR. BRODSKY: It is.

MR. ANOLIK: I would ask you to explain to the jury that his reference to the last trial was in connection with his testimony as a witness in that trial.

THE COURT: Well, we haven't been talking about any previous trial.

MR. ANOLIK: He mentioned it. He said he should be here at the last trial. He specifically said that. I just want to explain that Mr. Anolik as a lawyer has a right to request any witness to be here.

THE COURT: All right. I decline to do it at this time, but I will cover it during the course of the

charge.

(In open court)

BY MR. LOWE:

Q Mr. Gallentine, I want you to answer this question simply yes or no or "I don't know."

Were you present in a courtroom in this courthouse with Mr. Berkson either one week ago Thursday, yesterday, or two weeks ago from yesterday?

A No.

THE COURT: Now, when he says "with him," that means not that you came with him, but were you there present at the same time that Mr. Berkson was there?

THE WITNESS: No.

THE COURT: All right.

Q Mr. Gallentine, during the time that you were employed at Packer, Wilbur & Company, what was your salary?

A $300 a week.

Q And during the period of time that you were engaged in the forgery and unauthorized use of customers' securities for the benefit of Packer, Wilbur, did you receive anything of value other than your salary?

A No.

Q Mr. Gallentine, I would ask you to look at Government's Exhibit 40 for identification.

Tell me, if you can, what those documents are.

A Yes, these are checks issued to my order.

Q By whom?

A By Mr. Berkson, he signed the checks.

Q By whom are the checks drawn?

A Packer, Wilbur & Company.

Q Are those your paychecks?

A No.

MR. LOWE: The Government offers Exhibit 40 in evidence.

MR. BRODSKY: I would like to come up with this for a minute.

MR. ANOLIK: May I look at them first?

THE COURT: Yes.

(Pause)

(At the side bar)

MR. BRODSKY: With regard to these checks, as I understand it from the grand jury testimony and from other events, these checks, and I think Mr. Lowe knows this, too -- let me just state this: These were checks given to Gallentine and at the same time Gallentine gave checks back to the company.

That would appear, I believe, in the books and records of the company. I believe this is something the

Government knows. And for him to suggest --

MR. LOWE: I'm not suggesting anything.

MR. BRODSKY: You suggest in your question when you said to him, "Did you get 'x' dollars a week -- $300 a week in salary -- "Did you get anything else?" He says no.

And the next question is about these checks. He is certainly suggesting that this is compensation to him. I believe the Government knows --

MR. LOWE: I'm not suggesting.

MR. BRODSKY: Let me finish.

MR. LOWE: Let me explain what I am doing before you make accusations.

MR. BRODSKY: I'm not accusing you.

MR. LOWE: The point is I don't know any better than anybody else what this guy's testimony is going to be any more. I know what he said in the past. I know he has backed off in significant aspects of it.

I want to know what those checks are for. If they are for what he previously said they are for, I submit they are relevant on the issue of what these people were doing to generate cash.

If they are not, they are obviously relevant.

MR. BRODSKY: With all due respect, and you are

the last guy in the word I would accuse of doing anything underhanded, you know that -- I am not accusing you of that now. I am just saying that I do believe that the books and records show that this money came back, and there is really no dispute about this.

THE COURT: Assuming that is so, why isn't it relevant for him to show that this was another way they were generating cash?

MR. BRODSKY: My position has always been that it's not relevant. Your Honor has ruled on that.

THE COURT: On the question of motive I think it is relevant.

MR. BRODSKY: I understand your Honor's ruling over my objection.

THE COURT: And you are not going to be foreclosed from showing that he paid it back.

MR. BRODSKY: I know, but if he is now, through these questions implying to the jury that these were additional compensation --

MR. LOWE: I'm simply going to ask him what those checks were for.

MR. BRODSKY: -- coming as it does, Judge -- we do have a lay jury, and at the risk of repetition, the first question, "How much did you make a week?" "$300."

"What about these checks?" He is going to say it is part of the check-kiting because they are going to speculate this is wrong, they shouldn't check-kite, and Berkson is involved in check-kiting, which is going to spill over to him.

I think all of that is wrong, and I have said so. To let it come in now without an explanation and without the Government agreeing --

THE COURT: Withdraw the offer and then ask him, before you offer them, what they were for.

MR. LOWE: I offered them because it was my opinion that he can't testify about them until they are in evidence.

THE COURT: That would be objectionable, of course, but you are not going to object, as I undestand it.

MR. BRODSKY: That's right.

THE COURT: So I would say the foundation-laying of these documents is necessary.

MR. BRODSKY: There is a lot in this case that we haven't disputed. I think the Government has done the same. This is the first time that I come across a case where I think, and I'm not accusing Mr. Lowe of doing it intentionally, but I think we are getting the wrong

impression to the jury.

I think we ought to have the Government take the position that all it was was check-kiting, and it wasn't additional compensation.

MR. LOWE: I can only ask the witness one question at a time. When I ask him what the checks were for, if he says the same thing as he said in the grand jury, he will say it was check-kiting.

"I gave them my check, they gave me their check, and it was a wash."

Now, I have no confidence in what he is going to answer to anything any more. The point is I can only ask him one question at a time.

That he got the checks is a fact that I need to establish. What he got them for has to be the next question. I can't ask all the questions at once.

MR. BRODSKY: But having impeached Gallentine from here to kingdom come already and putting these questions in this way, Judge, no matter what he says we don't have the checks going back the other way. I don't think he has them. I don't know if he does or not.

No matter what he says now, it's going to come across as if he received additional compensation, which he didn't.

That is just unfair to these defendants to let the jury have that impression.

THE COURT: In view of the fact he can explain it and you can bring it out if Mr. Lowe doesn't bring it out, I think that that would be sufficient to cure what you are talking about.

I overrule the objection, if that is an objection.

MR. ANOLIK: And I join in it, Judge.

MR. BRODSKY: Would you tell the jury, Judge, now that they are going to come in, when they do come in that they are coming in for a limited purpose?

THE COURT: We have to hear the answers.

As he says, we don't know what this fellow is going to come up with. If he doesn't come up with an answer that it is check-kiting--I will even use that phrase if you want me to -- and say this is only check-kiting which may or may not be something which is subject to state action but it has nothing to do with what we are concerned with her.

MR. ANOLIK: I would appreciate if you do that, your Honor, so at least they will have it in proper perspective.

THE COURT: All right.

(In open court)

* * * (Government's Exhibit 40 is received in evidence.)

(Continued on next page)

(In open court)

BY MR. LOWE:

Q Mr. Gallentine, what were those checks to your order in total amount of almost $20 thousand for?

A These were to return to me that amount of money which I had given -- which I had written checks for to the order of Packer, Wilbur.

Q When had you written the checks you wrote?

A On or before the date that these checks were issued.

Q What was the nature of that transaction?

A To exchange checks.

THE COURT: To, so-called, generate some cash into the account?

THE WITNESS: Yes.

THE COURT: Or what is properly called check kiting?

THE WITNESS: Yes.

THE COURT: All right, now, read what I said about check kiting. Start where I say what check kiting is.

(The reporter read as follows:

"THE COURT: And I will say this is only check kiting, which may or may not be something which is subject

to state action but that has nothing to do with what we are concerned with here.")

THE COURT: This is allowed, if you recall, when I allowed those other bank accounts to be allowed into evidence on the question of motive; that's the only purpose.

Go ahead, Mr. Lowe.

BY MR. LOWE:

Q Mr. Gallentine, directing your attention to Government's Exhibit 41 for Identification, are those Packer, Wilbur records?

A Yes.

Q Are those various pages from the Packer, Wilbur ash blotter?

A Yes.

Q Directing your attention to the portion of each page outlined in red, do those records reflect the payment of money into Packer, Wilbur by James Gallentine?

A Yes.

Q And do those payments match up with the checks from Packer, Wilbur to you?

A Yes.

Q In terms of date, that is?

A Of date?

Q Yes.

A Yes.

MR. LOWE: The government offers Exhibit 41 in evidence.

THE COURT: Just the parts marked?

MR. LOWE: Just those portions marked off in red ink.

MR. BRODSKY: No objection, your Honor, as to those parts outlined in red.

MR. ANOLIK: No objection.

xx (Government's Exhibit 41 for Identification received in Evidence.)

Q Mr. Gallentine, how did you come to engage in this check kiting?

MR. BRODSKY: I object, your Honor.

THE COURT: Well, suppose you rephrase it.

Q What were the circumstances under which those checks were written and for which you got back checks?

MR. BRODSKY: Same objection, your Honor.

THE COURT: Overruled.

THE WITNESS: In order to create a cash flow for our checking account.

THE COURT: But in addition to that did you do that on your own, or did you talk to somebody about it, or was anybody aware of it, or what? That's the point.

THE WITNESS: That was at the direction of Mr. Berkson and Mr. Rind.

BY MR. LOWE:

Q And this was all during January and February of 1971, is that right?

A Yes, I believe so.

MR. LOWE: I have no further questions.

MR. BRODSKY: Shall I proceed, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Gallentine, when did you first come to work for Packer, Wilbur?

A Sometime in 1964, 1965.

Q Try to keep your voice up, please, Mr. Gallentine.

A Yes.

Q And did you come to work as cashier?

A Yes.

Q And was Mr. Berkson working there at the time?

A Yes.

Q Was he a broker, a customers' man at the time?

A Yes.

Q And was he also a trader in securities? Did he make a market in securities at that time?

A He was a trader.

Q Will you explain to the jury what a market maker is?

A A market maker is in a position to buy or sell a stock. They make a market at a certain price to buy or sell at a certain price.

Q Now, did Mr. Berkson work at Packer, Wilbur from the time that you started to work there in 1964 until the company went out of business sometime in 1971?

A Yes.

Q And in all of that time what, to your knowledge, were his duties there?

A He was a trader.

Q Yes?

A He handled the trading for Packer, Wilbur.

Q Did he also have customers?

A Yes, he also had some customers.

Q To whom he would recommend securities from time to time?

A All I know is thathe had some customers that he took care of, yes, that he handles some orders for.

Q Now, to your knowledge did Mr Berkson ever make a market in Robotguard stock?

A Well, Packer, Wilbur made the market, Packer,

Wilbur made the market; Mr. Berkson handled the orders.

Q Well, but did he ever actually trade Robotguard stock, to your knowledge?

A I can't answer that.

Q You don't know one way or another?

A No.

Q Do you know one way or another whether he ever traded Leasepac stock?

A No.

Q Did you know Mr. Hyman?

A Yes.

Q Is that William Hyman?

A Yes.

Q Was he at Packer, Wilbur at the time that you started that in 1964?

A Yes.

Q And did he remain until the company closed in August of 1971?

A Yes.

Q Mr. Hyman was a certified public accountant, was he not?

A Yes.

Q To your knowledge, was he also, at least at the time that you started to work there, the owner of all

of the stock of Packer, Wilbur?

A I don't know if he was the owner. All I know is that he was the president of Packer, Wilbur.

Q Was he the chief executive officer?

A He was the No.1 man, yes.

Q And was he, in effect, your boss?

A Yes.

Q Did you take orders from him?

A Yes.

Q Now, did Mr. Berkson in all the time that he was with Packer, Wilbur ever have anything to do with the physical custody of stock certificates?

A No.

Q Who did that?

A I did.

Q Along with these other employees, some of whom have testified?

A Yes, with my clerical employees, yes.

Q In all the time that you worked at Packer, Wilbur did Mr. Berkson ever have anything to do with the books and records of Packer, Wilbur?

A No.

Q Was Mr. Hyman the one who was ultimately in charge of the books and records?

A Yes, Mr. Hyman handled the financial s[illegible]ments also.

Q Mr. Berkson had nothing to do with that, did he?

A No.

Q Now, in the time that you worked at Packer, Wilbur you worked in two different locations, did you not?

A Three.

Q Three?

A Yes.

Q Well, there is a place on Broadway.

A 39 Broadway, 26 Broadway and 160 W[illegible]cer Street.

Q When did you move to 160 Water Street?

A Sometime in 1969.

Q When were you at the locations on Broadway?

A Well, when I first went with Packer, Wilbur it was 39 Broadway; we were there a couple of years, and then we went over to 26 Broadway.

Q And then sometime in approximately 1969 you moved to Water Street?

A Yes.

Q Now, referring to the Water Street location, can you describe, first of all, the physical location where you worked and the employees who worked under you; that is, the employees who worked at or near or in the cage?

A We were in a room such as this with a wall and a door.

Q Would you tell the jury what the cage is?

A The cage is the back office where the books and records are kept, and the bookkeeping department, the transfer department, the various back-office operations.

Q Where was Mr. Berkson's office in relation to the cage and the place where you worked?

A He was at the trding desk, and the trading room was beyond the wall through the door.

Q So there was no glass partition or a ything --

A No.

B2 Q -- where you could see what he was doing during the day or he could see what you were doing during the day, is that correct?

A Yes.

Q Was the same the case with the address on Broadway before you moved to Water Street?

A Yes.

Q Now, with regard to the physical custody of securities, those securities were brought to a bank vault every night, were they not?

A Yes.

Q And brought from the bank vault to the offices

of Packer, Wilbur each morning, is that correct?

A Yes.

Q Now, did Mr. Berkson have anything to do with that?

A No.

Q Now, you have testified, Mr. Gallentine, that from time to time you asked certain employees to sign customers' names to securities, is that correct?

A Yes.

Q Now, you don't remember Mr. Berkson ever being present while that activity was going on, do you?

A No.

Q Was there ever a daily physical count of the securities kept by Packer, Wilbur?

A No.

Q Mr. Gallentine, would you explain to the jury what a "fail to receive" and a "fail to deliver" is in the brokerage business?

A A fail to deliver is a trade made with another broker which is not consummated on the settlement date. Vice versa, a "fail to receive" is a trade in which the selling broker did not make a delivery to us on the settlement date.

Q Now, Mr. Gallentine, if Packer, Wilbur had

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failed to receive certain customers' securities, and the company involved with those securities had paid a dividend, those customers would not receive the securities, is that correct?

A You will have to repeat the question. I think we are missing something.

THE COURT: Not receive the dividends, not the securities.

MR. BRODSKY: The stock dividends.

THE COURT: You said the securities.

MR. BRODSKY: I'm sorry, I misspoke.

THE WITNESS: On a "fail to receive" we are talking about stock being delivered in to us from another broker.

Q Right. If there is a "fail to receive" and that company declares a stock dividend, Packer, Wilbur would not receive the stock dividend on behalf of that customer, is that correct?

A We would not receive the dividend which was applicable to those number of shares.

Q Yes.

A Yes.

Q So therefore that particular customer, whoever would own those shares, wouldn't get his dividend under

those circumstances, isn't that correct?

A Yes.

Q And that, in your experience, is quite a common practice in the brokerage business, isn't it?

A Yes.

Q It is a common problem because of the late delivery of stocks that stock dividends and cash dividends sometimes are not received or received very late, is that correct?

A Yes, it becomes a part of the dividend record.

Q And at Packer, Wilbur there were also stocks in nominee names, is that correct?

A Yes.

Q Would you explain what that means to the jury, please?

A The nominee name is the name used by Packer, Wilbur because we could not have stock registered in the name of Packer, Wilbur & Company, so therefore we use the nominee name to substitute for Packer, Wilbur, which is Pack, Wil Co., so that we would receive any dividends over a record date. We wouldn't miss any dividends.

Q You wouldn't miss them, but the dividends would come to Packer, Wilbur rather than to the customer, is that correct?

A Yes.

Q So that might be an instance where a customer would not receive a dividend, is that correct?

A Yes, that's correct.

THE COURT: But Packer, Wilbur would not get that dividend. Pack, Wil would get the dividend?

THE WITNESS: That's correct, yes.

MR. ANOLIK: Your Honor, that is, of course, a synonym for Packer, Wilbur.

THE COURT: I understand that, but it's a different name. It is part of the same group.

Does anyone on the jury want a recess at this time.

(No response.)

THE COURT: All right, we will continue.

BY MR. BRODSKY:

Q Mr. Gallentine, you recall as part of your direct examination you were asked some questions about a transaction involving Arthur G. Berkson & Company, represented by Exhibits 12 and 13. Do you remember that?

A Yes.

Q These 10 thousand shares of Robotguard Incorporat right?

A Yes.

Q And the date, at least, on Exhibit 12 is August 20, 1970; do you recall that?

A Yes.

Q Now, in that case, stock or Robotguard was delivered to a bank, was it not?

A Yes, that is right.

Q Now, Mr. Berkson had nothing to do with gathering the particular certificates and getting them together for delivery to the bank, did he?

A No.

BY THE COURT:

Q What bank was that, Mr. Gallentine?

A Sterling National Bank.

Q Is that in Long Island?

A In Forest Hills, yes.

BY MR. BRODSKY:

Q So that at least as far as your knowledge is concerned, Mr. Berkson had no knowledge of what particular securities were being delivered to the Sterling National Bank, is that correct?

A Yes, that's correct.

Q Mr. Gallentine, do you remember when you were indicted in connection with this case?

A Yes.

Q When was that?

A In September, I believe. September.

Q Of last year?

A Of last year.

Q And before you were indicted you appeared before the grand jury at some point, did you not?

A Yes.

Q And was that in June of 1973?

A Yes.

Q So that is more than two years before the actual indictment, is that correct?

A Yes.

Q And before that time you spent several occasions with Mr. Lowe, did you not?

A Yes.

Q Now, before you appeared before the grand jury, about how many times did you visit with Mr. Lowe?

A Many times.

Q Well, can you give me your best recollection of how many?

A I would say over 15.

Q And all of those visits were in Mr. Lowe's office, were they?

A Yes.

Q Over what period of time did that extend?

A Two or three months.

Q Now, when you first came in to see Mr. Lowe and he asked you, at least, to your knowledge, what Berkson knew about these forgeries and unauthorized use of customers' certificates, you told him that as far as you know Mr. Berkson knew nothing about isn't that correct?

A Yes.

Q And did you tell him that on each occasion when he asked before you appeared before the grand jury?

A Yes, that's right.

Q And in the course of this time did Mr. Lowe offer to make some kind of a deal with you in return for your cooperation with the government?

A No.

Q Would this come sometime afterwards?

A Yes.

Q But in the course of your appearances in Mr. Lowe's office was there ever any time before you appeared before the grand jury that you told Mr. Lowe that Mr. Berkson was aware of anything that was going on?

A I don't recall.

Q But, at least by your perception, was Mr. Lowe attempting to get you to say that --

MR. LOWE: I am objecting to anybody's perception of what my state of mind was.

THE COURT It starts off bad. I suggest you rephrase it.

Q Well, did Mr. Lowe tell you that he wanted you to say, in words or substance, that Mr. Berkson was aware of what was going on?

A No, I wouldn't say that.

B3 Q Now, in addition to talking to Mr. Lowe in these 15 times before you appeared before the grand jury, you also were looking at books and records of Packer, Wilbur, were you not?

A Yes, that's right.

Q And working with Mr. Soffler who is sitting here?

A Yes.

Q What were you doing?

A I was explaining to them the transactions that took place, the transactions that had been presented as evidence here.

Q And you were going over the books and records with them, were you?

A Yes.

Q And how many times would you say that Mr. Lowe asked you whether or not Mr. Berkson had anything to do

A I wouldn't venture a guess.

Q Was it often?

A No.

Q Now, when you appeared before the grand jury you did say -- and Mr. Lowe has read some of that testimony -- that Mr. Berkson - and you used the words "was aware of what was going on."

Now, would you explain that, why you said that -- wait a minute, before you do that, that testimony before the grand jury is inaccurate, is it not?

A Yes, that's correct, it is inaccurate.

Q And you have previously testified on a prior proceeding just about a month ago that that testimony was inaccurate, isn't that correct?

A Yes, that's right.

Q And before you testified in the prior proceeding you told Mr. Lowe that the testimony was inaccurate, did you not?

A Yes, that is right.

Q Now, would you explain that testimony to the jury, please, and why you made an inaccurate statement before the grand jury?

A It is difficult to explain. I just don't know if I could explain it.

Q Well, maybe I can help --

MR. LOWE: I don't think that's quite appropriate

THE COURT: Well, I have no question before me, and the statement "maybe I can help" is not a question, and therefore I direct the jury to disregard it.

MR. BRODSKY: I quite agree with that.

Q Well, was it because you had been going over the same facts time and time again in the United States Attorney's Office?

A The only way I can explain it, that in going back over the records, rehasing -- rehasing the transactions, I formulate in my mind certain pictures which wasn't the way it really was.

The way it really was was what I was explaining yesterday.

Q Which was what?

A We were faced with a situation of trying to stay in business. Mr. Rind, Mr. Hyman, Mr. Berkson and myself felt that we had a going concern, we were trying to stay in business.

As I mentioned, Mr. Rind was bringing in some fresh capital. We had the 20,000 shares of Leasepac warrants which I was told were going to be exercised, and with this, with a little -- what can you say? -- with a little luck we would be able to sustain ourselves. There was just a general overall feeling of working together.

Q Well, now, my question to you, though, is whether or not it's clear in your mind as you sit here now and you are testifying under oath that you never told Mr. Berkson that you were forging customers' signatures to

stock powers and certificates?

A That's true. Mr. Hyman said to me to use Ephraim Block's stock, which I did. I put the stock into the box. It became a part of our stock that we used on a daily basis.

I didn't explain to anybody that powers were forged or anything else.

A couple of occasions with Mr. Rind I mentioned to him that we -- or he knew because I told him we didn't have the physical securities, that we had to use customers' stock for a couple of these trades.

Q But you never told that to Mr. Berkson; is that correct?

A No, I don't recall mentioning it to him. I didn't mention it to Mr. Hyman either.

Q Is that fact now clear in your mind because you have gone over this matter so many times from the beginning?

A Going over and over this, this is the way it is. This is the way I remember it, yes.

Q And as you sit here now and remember that you are under oath now, is that your clear recollection as you sit here now?

A Yes, that is my clear recollection.

Q That Mr. Berkson never had anything, at least

as far as your knowledge is concerned, never had any knowledge of these forgeries or --

A I can't recall, I can't recall mentioning to him or speaking to him about it. Perhaps I should add or should mention that until after Packer, Wilbur closed up. You see, this is where I may have confused or became inaccurate in my statements because of the time element.

Q Well, let me get into that now.

When Packer, Wilbur closed up, that was in about March of 1971; isn't that correct?

A The trustee came in sometime in March. I do not recall exactly when.

Q And even after the trustee came in, did you continue to work with the trustee?

A I worked with the trustee until sometime in June.

Q Of 1971?

A L971.

Q And as you have already testified, you went over to work at A. J. Carno; is that correct?

A Yes.

Q And while you were working at A. J. Carno you did see Mr. Berkson from time to time, did you not?

A Yes.

Q And do you recall at least when the investigation into these forged certificates started -- how long after 1971 was that?

A 1973.

Q 1973?

A Yes.

MR. LOWE: I am going to object to that on the grounds that the question has to be narrowed to when did he learn of an investigation, because I don't think he can say when an investigation started.

MR. BRODSKY: I have no objection to that.

Q As far as you know, as far as anybody contacting you about the investigation of this matter,that happened in 1973; is that correct?

A Yes. I was called to the U. S. Attorney's Office sometime in 1973.

Q And sometime after you were called to the United States Attorney's Office, did you tell Mr. Berkson that you had been called to the United States Attorney's Office?

A Yes.

Q And at that time,sometime in 1973, did you tell him that you had forged certificates --

A Yes.

Q -- at Packer, Wilbur?

A Yes.

Q Was that the first time that you told him that?

A Yes.

Q So that when you appeared before the grand jury and you said that Mr. Berkson was aware, might you have been confusing the --

MR. LOWE: Objection to what might have been.

MR. BRODSKY: I'm not finished.

MR. LOWE: Objection to what might have been.

THE COURT: That's a bad word. I suggest you rephrase it.

Q When you appeared before the grand jury in 1973 and you said that Mr. Berkson was aware, were you confusing the time that you made him aware and thinking in terms of 1973 rather than the time that the forgeries were going on?

A Yes. That's what I just explained. This is what I meant just previously when I said I was confusing the time period.

Q Now, when you told Mr. Berkson sometime in 1973 what you had done at Packer, Wilbur, did he question whether or not you should stay on at A. J. Carno?

A No. I asked him if it would make any difference, you know, and there was no question, no.

Q What were your duties at A. J. Carno?

A I was the cashier.

Q Were your duties the same as they were at Packer, Wilbur?

A Yes.

Q And A. J. Carno stopped doing business sometime in December of 1974; is that correct?

A Yes.

Q And you continued to work for A. J. Carno after that time, did you not?

A After which time?

Q After December 1974.

A Yes.

Q What were you doing?

A Closing up the books and records.

Q And what did that entail?

A Well, we had certain expenses, there were still certain stocks that needed to be transferred, certain trading positions that A. J. Carno still has, which I check on periodically as to prices, as to whether there is still a market in the stock.

Q How much were you paid at A. J. Carno at the time you started there?

A My salary was $275.

Q And when the work at A. J. Carno became less

time-consuming, that is, after December 1974, did you get paid less money?

A Yes.

Q Were you kind of paid on the basis of how much time you put in after December of 1974?

A Yes.

THE COURT: Can we suspend a minute, Mr. Brodsky?

MR. BRODSKY: Surely.

THE COURT: We will take a recess at this time. Please keep your minds open.

(Recess)

(In open court - jury not present)

MR. ANOLIK: Your Honor, I gave your clerk an affidavit from my client.

THE COURT: There is a form you can get?

MR. ANOLIK: I will get the form then.

THE COURT: Bring in the jury.

(Jury present)

BY MR. BRODSKY:

Q Mr. Gallentine, before we recessed, I was asking you some questions about your compensation at A. J. Carno. Now, do you recall after December 1974 -- first of all, how much were you making before December 1974?

A $275.

Q A week?

A A week.

Q Now, after December 1974 that amount was decreased, was it not?

A Yes.

Q After that time you got paid on the basis of the amount of time, more or less, that you would work at A. J. Carno; is that correct?

A Yes.

Q As the work dwindled down your compensation dwindled down; did it not?

A Yes.

Q So that as time went on and there was less work to do, you got less money from A. J. Carno?

A Yes.

Q And can you give the jury some idea of how much you were paid after December 1974 and on what basis?

A Maybe $50 a week.

Q And that wasn't a steady kind of thing, was it?

A No, it wasn't.

Q Now, all of the money that you got as salary from A. J. Carno was in the form of checks of A. J. CArno to your order; isn't that correct?

A Yes.

Q Now, you recall you testified on direct examination about a conversation you had with Mr. Berkson relating to a stock dividend -- do you recall that?

A Yes.

Q Do you remember which company that was?

A The stock?

Q Yes, stock dividend.

A That was Leasepac.

Q Leasepac. Now, in thinking about that stock dividend conversation, do you recall that that conversation also was sometime in 1973 after the investigation started?

A I don't follow you.

Q Well, I am trying to understand when the conversation about the stock dividend at Leasepac occurred between you and Mr. Berkson.

Do you understand the question?

A Yes, yes.

Q Now, in thinking back upon this, did that conversation occur after the investigation commenced?

A I really couldn't say.

Q You couldn't say one way or the other?

A Right.

Q So you don't recall now when the conversation

took place; is that correct?

A I would say it would be within a couple of weeks after the dividend period. I would say that's when it probably occurred. If I had the conversation, which I said I did, that's when it would be.

Q Now, in connection with that conversation were you talking about, among other things, stocks where there were failures to deliver?

A No. It would just be with the customers.

Q Stocks that were in nominee name?

A No. It would just be in reference to the customers that were stockholders of record -- that were not stockholders of record that we had not been able to transfer into their names; our customers which we had not been able to transfer into their names so they would be stockholders or record, and thereby receiving the dividend directly.

Q Now, I would ask you about some questions of who traded in the stock of Leasepac and Robotguard, who were the individuals at Packer, Wilbur who did that while you were working there.

Let me show you this and see if that refreshes your recollection as to who was the individual or individuals

MR. LOWE: What are you showing him?

rd ja 11 Gallentine - cross

MR. BRODSKY: A transcript of a prior proceeding.

MR. LOWE: What page?

MR. BRODSKY: Page 114.

A (Reading)

Q Does that refresh your recollection as to who was the individual or individuals who were making a market in Leasepac and Robotguard?

A Mr. Rind was theone who handled the trading in Leasepac.

Q And the stock of Robotguard was traded on a national exchange, was it not?

A No. Roboguard?

Q Robotguard.

A I don't recall. I don't recall. I can't say.

Q Well --

A I don't believe it was listed on the national exchange.

Q Was Leasepac?

A No.

Q Mr. Gallentine, you recall after you told Mr. Berkson about this investigation, you told him about what you had done, that he asked you whether or not you

rd ja 12 Gallentine - cross

should really continue on at A. J. Carno?

MR. LOWE: His testimony was that he asked Mr. Berkson that.

THE COURT: Yes. That was asked and answered a little while ago, besides that.

MR. BRODSKY: I think I have a right to probe it, your Honor.

THE COURT: You may have a right to probe it, but the fact is, as he put it, Berkson didn't talk to him; he asked Berkson.

Your question indicates that Berkson asked him whether he thought he should stay.

Q Do you recall asking Mr. Berkson that question?

A I asked him if it would make any difference.

Q Yes?

A He said to him it wouldn't make any difference, because he --

Q Do you recall also that he asked you whether or notyou had forged any certificates at A. J. Carno; isn't that correct?

A Pardon?

Q Do you recall he asked you whether you had forged any certificates at A. J. Carno?

A No. There was no question about that.

rd ja 13 Gallentine - cross

Q You never forged any certificates at A. J. Carno, did you?

A No.

Q A. J. CArno also had financial trouble sometime in 1974, did it not?

A No. It had a capital problem which was due to a different situation.

Q And after you had the capital problem, did you ever forge any certificates at A. J. CArno?

A No.

Q Did you ever use customers' certificates in any way that was unauthorized at A. J. Carno?

A No. We had a capital problem. We did not have a cash problem.

Q Now, at some point you made an agreement with Mr. Lowe about your cooperation in this case, did you not?

A Yes.

Q When was that?

A I really couldn't say exactly when.

Q Well, was it sometime within the past year.

A Yes. It was prior to the -- yes.

Q Prior to the what?

A It was within the last year.

Q And was that before or after you were indicted?

A Afterwards.

Q Now, you were indicted and accused of ten separate crimes, were you not?

A Yes.

Q And under your deal with Mr. Lowe you pleaded guilty to one of those crimes; is that correct?

A Yes.

Q And you will not be tried, as you understand the agreement, for the remaining nine different crimes; is that correct?

A Right.

Q And the crime that you were permitted to plead guilty to carries a maximum jail term of two years; is that correct?

A Yes.

Q And the other counts in the indictment carry maximum jail terms of five years; is that correct?

A I don't know.

Q You don't know that?

A No.

Q You were never told that by anybody?

A I probably was, but, I mean, numbers I don't remember.

Q And you haven't been sentenced yet, have you?

A No.

Q And your sentence -- you were scheduled to be sentenced sometime last week; is that correct?

A No, Monday, June 7th.

Q But you had been scheduled sometime before that and it was postponed, was it not?

A No.

Q I beg your pardon?

A It has been postponed. It was supposed to have been June 7th.

Q When was it originally scheduled for?

A June 7th. Now it has been postponed.

Q So you will not be sentenced on June 7th?

A No.

Q Is there a sentencing date scheduled?

A No.

Q And were you told that you would not be sentenced until after you testified in this case?

A No, I don't belive so.

Q When did you plead guilty?

A A couple of months ago.

Q Two months ago?

A Sometime within the last two or three months.

Q And were you told that any cooperation that you

gave to the Government would be made known to the Court?

A Yes.

Q At the time of sentencing?

A Yes.

Q Mr. Gallentine, are you married?

A Yes.

Q How many children do you have?

A Four.

Q What ages?

A 24, 22, 20 and 9.

Q Now, Mr. Gallentine, you have spoken to Mr. Lowe, as you testified, many times about this matter; is that correct?

A Yes.

Q You have testified about this matter now once before the grand jury; is that correct?

A Yes.

Q Once in a prior proceeding; is that correct?

A Yes.

Q And yesterday and today; is that correct?

A Yes.

Q Now, Mr. Gallentine, you have had many, many opportunities to reflect on what happened while you were at Packer, Wilbur; is that correct?

Q Yes.

Q To reflect on those forgeries?

A Yes.

Q To reflect upon who you spoke to and who you did not speak to; is that correct?

A Yes.

Q Now, Mr. Gallentine, under oath and as God is your witness, did you ever in that period of time, ever talk to Mr. Berkson about those forgeries and unauthorized use of certificates?

A During which period?

Q During the period you worked at Packer, Wilbur.

A No.

MR. BRODSKY: Thank you.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Mr. Gallentine, you have met me about a month or so ago, isn't that so?

A Yes.

Q That was during another proceeding in this matter; isn't that true?

A Yes.

Q Prior to that time we never knew each other, did we?

A No.

Q Now, incidentally, you testified, I think, when Mr. Lowe was examining you -- I think it was Mr. Lowe, I'm not sure -- that at a former trial I asked you to remain around the courthouse.

Do you remember that?

A Yes.

Q Thatwas pursuant to my request that you might be used as a witness, isn't that so?

A Yes.

Q Now, Mr. Gallentine, is it not a fact that at Packer, Wilbur you were the cashier in a sense that you were the boss of that particular department; isn't that true?

A The back office operations, yes.

Q Would you just explain to the jury what you mean by the back office operation?

A The back office operations entail the daily receiving, delivering of securities, the recordkeeping, the bookkeeping, the accounting, of running the stock brokerage office.

Q And did youhave any special training in that field?

A I have an accounting background. I have some

accounting schooling.

Q Now, Mr. Hyman was president of Packer, Wilbur; is that correct?

A Yes.

Q What was his first name, by the way?

A Wilbur.

Q Is that where the Packer, Wilbur came in?

A I don't know.

Q But be that as it may, he is now in Spain, isn't that so?

A I understand he is in Spain.

Q And there came a time, did there not, that you were hired by Packer, Wilbur, isn't that so?

A Yes.

Q And I believe that on prior occasions you weren't quite sure whether it was '67, '66, '65, '64. What is your present recollection as to when you were hired?

A It would be '65, I believe '65 or '66.

Q Now, did there come a time that you met Mr. Rind?

A Yes.

Q When was the first time you met Mr. Rind?

A Shortly after I became employed with Packer, Wilbur.

Q Now, did you have authority to sign checks at Packer, Wilbur?

A Yes.

Q Who else had autority to sign checks at Packer, Wilbur?

A Mr. Berkson and Mr. Hyman.

Q Did Mr. Rind have authority to sign any checks?

A No.

Q Did Mr. Rind have authority to sign anything on behalf of that company, as far as you know?

A Yes -- I mean he did not have authority, as far as I know.

Q As far as you know, he wasn't even an officer of the company, to the best of your knowledge; is that true?

A At that time I don't know whether he was an officer.

Q So your checks, your payroll checks were never signed by Mr. Rind?

A No.

Q As a matter of fact, no checks were ever signed by Mr. Rind; isn't that true?

A Right; for Packer, Wilbur & Company.

Q Of course from Packer, Wilbur & Company. That's all we are talking about now is Packer, Wilbur & Company.

Did you know whether or not Mr. Rind was a man of independent means, if you know?

A No.

Q You knew that he was an officer of a number of other corporations, did you not?

A Yes.

Q As a matter of fact, he was quite an expert in sales; isn't that true?

A Yes.

Q He had the expertise in generating stock transactions; isn't that true?

A Yes.

Q When you testified that Mr. Rind came up with ideas of how and in what manner trades would be made, that was with a view toward stock transactions; isn't that true?

A Yes.

Q Now, did there come a time that Mr. Rind himself invested his own capital in this firm, he brought in fresh capital?

A I can't recall what he did bring in, but I believe he did bring in some money, but I don't recall what.

Q He certainly invested his own money, didn't he? I'm not asking you for amounts.

A I believe he did. I can't say yes or no, but I believe he did invest some of his own money.

Q Would your best recollection be that he lost the money he invested?

A I don't understand what you mean by he lost money.

Q Did anybody make moeny on this deal? The company went bankrupt, did it not?

A That's true.

Q Now, you were talking primarily before about your duties as the cashier of Packer, Wilbur. I believe you testified that there came a time that you had to make certain transactions and because you didn't have certain stock immediately available, you decided to sign customers' names to that stock without authorization; is that correct?

A I decided?

Q Well, it was decided.

A It was decided, yes.

MR. LOWE: "It was decided" is not an admissible answer. I move that be stricken.

Q Did you in fact --

THE COURT: Are you withdrawing the question?

MR. ANOLIK: Withdraw it.

THE COURT: Strike the question and answer.

BY MR. ANOLIK:

Q Did you sign customer certificates without authorization?

A Yes.

Q You testified specifically about 10,000 shares of the common stock of Leasepac organization, do you remember that?

A Yes.

Q As collateral for a $300,000 one-year loan?

A Yes.

Q That was made by Euclid National Bank of Cleveland to Allegro Sound Studios and/or Theatre Systems Corporation; do you remember that?

A Yes.

Q I show you Defendant's Exhibit A for identification and ask you to read it to yourself and then I will ask you some questions.

A (Reading)

Q Does that refresh your recollection where Mr. Rind was when this Leasepac matter was deviced?

A He was with the firm.

Q Wasn't he in Ohio, though?

A That I don't know.

Q You don't know where he was, in other words;

is that your answer?

A As far as I can remember, he was in the office. I mean he was in New York, let me say that.

Q He was in New York?

A In New York, yes. He was in and out of our office. He was working in the office, if that's what you are getting at.

Q Didn't he go frequently to Ohio, if you know?

A He spent some time out in Ohio, but here I can't say what period of time. At this particular period of time I don't know whether he was in Ohio or not.

Q The period of time you said you discussed the fact that you needed certain stock with Mr. Rind, isn't it a fact you couldn't have discussed it with him because he was in Ohio?

A No, I wouldn't say that.

MR. ANOLIK: I will offer this in evidence at this time, your Honor.

MR. LOWE: May I see it?

MR. ANOLIK: Yes.

(Pause)

MR. LOWE: Objection. It is hearsay.

THE COURT: Sustained.

BY MR. ANOLIK:

Q Mr. Gallentine, did you have any conversation with Mr. Hyman concerning the Leasepac deal?

A No.

Q You never had a conversation with Mr. Hyman concerning the Leasepac deal?

A Concerning this?

Q Concerning the Leasepac transaction.

MR. LOWE: Which Leasepac transaction?

MR. ANOLIK: What we just mentioned before, the pledging or hypothecation of 10,000 shares of the common stock of Leasepac as collateral for a $300,000 one-year loan.

A No, no. All I had to do with that was when Mr. Rind said he was going to negotiate a loan for the 10,000 shares, to get up the 10,000 shares. That's all I know.

(Continued on the next page)

Q You never told Mr. Hyman, the president of this company, about this?

A No, I didn't, no.

Q You never told Mr. Berkson about it?

A No, because has nothing to do with making the loan. This was Mr. Rind. Mr. Rind was making the loan. It was between them, not -- I only handled the physical securities for the 10 thousand shares.

Q In other words, you never at any time discussed what you had allegedly done with respect to Leasepac with either Mr. Hyman or Mr. Berkson or with anyone else except Mr. Rind, is that right?

A Yes, that's right.

Q Mr. Rind wasn't an officer of this company, was he?

A No, but he was negotiating the loan. He was negotiating this loan using the 10 thousand shares.

Q But the point is, he had no authority to direct you to do anything, isn't that so?

A No, I wouldn't say thathe didn't have any authority. At this time he was the one who was handling the financial work or the daily cash -- our daily cash position. He was the one who was more or less working up the trades, he was working at gathering, at making enough

cash available.

Now, this was one instance, this was the first instance.

Q You mean he was trying to find means whereby the company can stay in business?

A Yes, that's right. That's what I said all along

Q Now, you don't think Mr. Hyman was interested in staying in business?

A I didn't say that, but between Mr. Rind and Mr. Hyman there must have been some discussion.

Q You don't know of any discussions?

A No, I don't know of any discussions.

Q Do you know if Mr. Hyman told Mr. Rind that the Leasepac Corporation stock was in possession of the company?

A At this time we had a trading position in excess of 10 thousand shares.

Q As a matter of fact, if Mr. Rind had looked at the trading position at that time of Packer, Wilbur he would have seen that you had more than 10 thousand shares of Leasepac in your possession, isn't that true, or at least on the books?

A The books and records reflected our trading position that Packer, Wilbur owned. We may not necessarily have had physically in our possession 10 thousand shares.

Q But they owned more than 10 thousand shares?

A Yes, we did own more than 10 thousand shares.

Q And isn't it a fact that what happened here is that Mr. Rind had told you that this was a transaction which he arranged, and he said, well, effectuate it; that's about all he said, isn't that true?

A Yes, but I have explained to him that we didn't have the 10 thousand shares.

Q He never told you to forge any certificates, did he?

A He said to get the 10 thousand shares, yes. I told him we were going to have to use customer securities, yes.

Q You told him -- you said it was understood; isn't that what you said before?

A I think that was in relation to something else. That was in relation to our overall feeling of staying in business.

Q Mr. Rind specifically never told you to do anything improper, did he?

A Yes, he said that we had to get up the -- that we had to get up the 10 thousand shares; that I had to go ahead and use the customer securities.

Q You are saying Mr. Rind told you that?

A Yes, he told me to go ahead and do it, yes.

Q You testified at a prior time in this trial, page 136 -- a prior occasion, not in this trial --:

"Q As a matter of fact, you testified" -- meaning you -- "I think, when Mr. Lowe, the United States Attorney, was questioning you, that you really never had any specific conversations with Mr. Rind about saying this; he merely said that this is the matter on which we have to try to raise some money, put together the stock, or whatever is necessary, and let's effectuate a sale; isn't that so?

"A This is the way it came about, yes.

"Q So that there wasn't any situation where he said, 'Now, look, I want you to forge this or do that,' or anything of that sort, isn't that so?

"A That's true. It was taken for granted. We were in a cash bind or in a cash -- in an overdraft situation and it was a means that was necessary in order to fulfill this trade, to make this delivery.

"Q You took it for granted, is that correct? You took it for granted, isn't that so?

"A Well, yes."

Did you give those answers to those questions?

A Yes, that's in regards to the other transaction, but this particular trade -- this particular loan or this

situation of getting up the 10 thousand for this loan, this had to be done only with the use of the customers' securities which he knew about.

Q You mean which you say he knew about?

A Yes, because I had told him.

Q Will you tell us the exact words you said to him and he said to you?

A I couldn't say, I couldn't give you the exact words.

Q As a matter of fact, you never in all of your testimony prior to prior trial here ever said that he told you to forge certificates or to sign customers' names --

A Right --

Q Just a moment. It was for the first time in this trial -- the former one took place in May -- the first time that you ever brought that up, isn't that true?

A Yes, that's true, yes, you're right.

Q Now, let me ask you this: You made a bargain with the United States Attorney's office, isn't that true?

A Yes.

Q You decided to plead guilty to one count of a 10-count indictment, isn't that true?

A Yes.

Q But isn't it a fact that long prior to any plea

of guilty that you took, you already had been told by Mr. Lowe that if you cooperated, this is what would happen; you would be permitted to plead guilty to one count of a 10-count indictment and you would not be prosecuted on the other counts?

A No.

Q Didn't Mr. Lowe tell you that way in advance?

A No.

Q You mean that came as a big surprise after you were indicted?

A Yes.

Q But you testified at the grand jury session as a result of which the indictment came to pass, isn't that true?

A Yes.

Q Do you understand the question? In other words, you testified in front of the grand jury, isn't that so?

A Right.

Q As a result of your testimony in part an indictment came down in this case, isn't that true?

A That's right.

Q Are you telling this Court and jury that you agreed to testify and actually did testify without knowing what your deal was with the U.S. Attorney?

A Yes, that's right.

Q Sight unseen you did that?

A Yes, that's right.

Q Were you represented by a lawyer?

A No.

Q And you therefore relied upon the United States Attorney to just decide after you were already indicted, after you had already incriminated yourself up to your neck--yourself I'm talking about -- that he bestow upon you a present of saying, "Well, I'm going to dismiss nine of these 10 counts because you're such a nice fellow"; is that true?

A No, I didn't realize just exactly what the situation was.

Q You are saying that when you testified in that grand jury you had no understanding from Mr. Lowe that he made no promises to you, and it was only after you had fully incriminated yourself that you admitted that you had forged customer securities all over the lot, that after all that was already down in black and white, and you were a dead duck, so to speak, as far as the case was concerned, that he then said, "Well, you know, I'm going to dismiss at least nine of these 10 counts"; is that what he said to you? Right? Is that what you are telling this Court, in effect?

A Yes.

B2 Q Mr.Lowe never told you, therefore, before you were indicted if you agree to cooperate, that if you agree to cooperate truthfully, that nine of the 10 counts would be dismissed?

A That's right.

Q Didn't he tell you --

A We didn't have the indictment then. We didn't know how many counts -- I didn't know how many counts were coming down.

Q Don't you think Mr. Lowe had an idea of what his investigation was all about?

A That's for sure.

Q Don't you think he knew the manner in which it would be presented to the grand jury?

A Of course. I didn't --

Q Wasn't he able to discuss with you what the charges were, what they were investigating?

A He may have mentioned the charges, I don't just really remember. That part I don't recall at all.

Q That is much more recent than what happened back in 1970 with Mr. Rind, isn't it?

A That's right.

Q So this you can't remember. Something affecting

your own personal liberty you can't remember, is that correct?

A That's right.

Q As a matter of fact, weren't you told by Mr. Lowe that he wanted truthful testimony from you or he didn't want your testimony at all, isn't that true?

A No, he didn't mention anything like that, no.

Q Never told you to tell the truth?

A Oh, of course, sure, he always mentioned to tell the truth, certainly.

Q And isn't it a fact that you have told several different stories in these proceedings?

A No, only two.

Q Pardon me?

A Two.

Q Only two different stories you told?

A Yes -- well, I changed my testimony from the grand jury to here, that's right.

Q As a matter of fact, you testified before earlier today that your grand jury testimony was inaccurate, isn't that true?

A Yes.

Q And you say it was inaccurate because Mr. Lowe confused you, isn't that true; is that what you're saying?

A No, I didn't say he confused me, no; I'm just saying I was confused in relating to the time period, yes.

Q But you did say that you told Mr. Lowe subsequently that you had not testified truthfully in the grand jury, is that correct; in words or substance you told him that?

A I don't know --

Q You don't remember?

A You're asking me an awful lot of -- I just don't follow you at all, what you are getting at.

Q That's my job here.

A I know, I know.

Q Isn't it a fact that you have to produce some victim in order to try to get a good deal for yourself, isn't that true; that if you don't cooperate with the government by giving them someone's head to hang it's going to be tougher on you; isn't that true?

A I really don't know.

Q You mean no one ever told you that?

A No.

Q As a matter of fact, Mr. Hyman is in Spain so you can't do much to him; isn't that true?

A I am not trying to do anything to anybody.

Q Did you ever have any employment from Mr. Rind

at all?

A No.

Q Did Mr. Rind ever give you any money?

A No.

Q After you left Packer, Wilbur did Mr. Rind give you a job?

A No.

Q Did you ever see Mr. Rind after you left Packer, Wilbur?

A I think maybe once or twice.

Q Once or twice in all those years, isn't that so?

A Yes.

Q And, as a matter of fact, Mr. Rind couldn't even sign a check for a postal card in that firm, isn't that true?

A Right.

Q He couldn't draw out any money at all, could he?

A Right.

Q He couldn't hire anyone, could he?

A I wouldn't say that.

Q Well, he couldn't sign any documents, could he?

A He could have -- if you want to say he could have hired somebody, yes, he could have hired a secretary if he wanted, yes.

Q As a matter of fact -- you mean with his own

money?

A No.

Q He couldn't have drawn a check to pay her?

A But she would have been an employee of the firm. I mean, as long as you're saying he is hiring somebody, he wouldn't have hired anybody -- he could have asked me to give a job to somebody, certainly.

Q He could have asked?

A Yes.

Q But could he have written out a check to pay her salary?

A No, not from Packer, Wilbur, no.

Q As a matter of fact, he did have a secretary at Packer, Wilbur, didn't he?

A Yes, which Packer, Wilbur paid the salary for.

Q Do you know what her name was?

A Linda, I believe.

Q Was it Sussman?

A Cangemi, I believe.

Q All right, Cangemi, but she is married since then?

A Yes.

Q Do you know her name to be Sussman now?

A Yes.

Q Do you know if she testified here?

A Yes, I met her yesterday.

Q That was his secretary, is that true?

A Yes.

Q Do you think she knew perhaps more about his working conditions than you did?

A His working conditions?

Q Yes.

A Possibly.

Q Let me ask you this: You said that you discussed with Mr. Rind when the bank called up in the morning that there was a short cash position as to what to do to generate cash, is that true?

A No, I told him how much we needed, that's all I said.

Q You told him that in the morning, isn't that true?

A Yes.

Q And, as a matter of fact, the banks would call you in the morning; they wouldn't wait until 3:00 o'clock in the afternoon, would they?

A They would call us sometime about 9:30, 10:00 o'clock.

Q About 10:00 o'clock in the morning?

A Yes, sometime before noon.

Q And you would tell him immediately about that, isn't that right?

A Yes.

Q Because you had to delivery certified funds to the bank, isn't that so?

A No.

Q You had to deliver funds?

A Yes, but they didn't have to be certified; they would give us immediate credit on collectable funds.

Q Well, they were supposed to be collectable funds, let me put it that way?

A Yes.

Q At least collectable funds, isn't that true?

A Yes.

Q Were you aware of the fact that Miss Sussman or Miss Cangemi, her former name, testified under oath in this courtroom that she was his secretary; were you aware of that fact?

A That she testified?

Q Yes. Did anybody ever tell you --

A No, nobody ever told me that she testified to anything. I didn't talk to anybody.

Q Did anybody ever tell you that she testified in

this courtroom?

A No.

Q If I were to tell you that her testimony under oath yesterday was that he never came into that office before noon, what would your answer be to that?

A My answer to that is that I saw him, and he came in many times before 12:00 o'clock. Many times.

Q That is your testimony?

A Of course.

Q In other words, you know more --

A Not always -- all right, there are many times he came in late, sure, but you can't say every time he came in. Many times.

Q Do you know more about his comings and goings than his own secretary?

A You have to remember, you have to take into consideration this time period of August and September, this is the time period we're concerned about. We are not concerned about prior to that. Prior to that I know, yes, prior to that, three or four years before that, yes, he was out of the office more than he was in; but coming down to the crucial time period that we're talking about he was around all of the time.

Q In the mornings?

A All of the time.

Q And that's your testimony?

A Yes.

Q In other words, Mrs. Sussman, if she said otherwise, would be a liar?

A I don't know.

Q If she said that she's a liar?

MR. LOWE: I object to that.

THE COURT: Sustained.

I won't allow one witness to characterize another

B3 Q Now, your deal with Mr. Lowe permitted you to plead guilty to one count, isn't that true?

A Yes.

Q And you had a promise, therefore, that you wouldn't be prosecuted on the other counts, isn't that so?

A Yes.

Q And you were also told at that time that your cooperation with the United States Attorney's office would be called to the attention of the sentencing Court at the time that you were actually sentenced, isn't that true?

A Yes.

Q You have not yet been sentenced, isn't that so?

A Yes.

Q You cannot deliver Mr. Hyman; he is in Spain;

isn't that true?

A What do you mean I can't deliver?

Q Mr. Hyman is not on trial here, isn't that so?

A Right.

Q You have said that Mr. Berkson had nothing to do with this case, isn't that true?

A I don't believe I mentioned anything --

Q You said Mr. Berkson had nothing to do with any criminality in this case; you said that, didn't you?

A Yes.

Q So the only one left to you is Mr. Rind, isn't that so?

A It isn't.

Q It isn't a fact that Mr. Rind is really the only fall guy you can now hold to save your own neck with?

A No.

MR. LOWE: I object. That is argumentative.

THE COURT: Yes, it is. Sustained.

Q Mr. Gallentine, Mr. Rind was primarily a salesman, isn't that true?

MR. LOWE: I think that was asked and answered.

THE COURT: I think it has been. I think we have covered the ground before.

MR. ANOLIK: I just wanted to get this preliminar,

to going into another area.

THE COURT: How long are you going to continue on? I have two lawyers who have been waiting here since --

MR. ANOLIK: I will probably be another ten minutes or so.

Do you want me to continue?

THE COURT: Go ahead.

Q Mr. Gallentine, the function of Mr. Rind did not include signing any documents for the firm, isn't that true?

THE COURT: Oh, sustained.

Mr. Anolik, this has been gone over so many times. He doesn't cash checks; he is nothing but a salesman.

MR.ANOLIK: That's true. Fine.

Q Did he ever submit reports to the SEC?

A No.

Q Who submitted those reports?

A Mr. Hyman.

Q As a matter of fact, Mr. Hyman was an accountant, was he not?

A Yes. He was a CPA.

Q Wasn't he ultimately the person that was sponsible for everything in this firm?

A Yes.

Q And is it your testimony that you never told him about any of your transactions with respect to customers' securities?

A He knew about Mr. Block's because he's the one who told me to use Mr. Block's stock.

Q And, as a matter of fact, with Mr. Block you used the securities there because Mr. Hyman told you to use them, isn't that true?

A Yes.

Q And wasn't that exactly the same thing that happened with Leasepac, that Mr. Hyman told you to use that stock?

A No, no, no.

Q Do you know whether or not Mr. Hyman ever executed an affidavit to that effect? Do you know?

A No, I don't remember -- if he issued an affidavit that we use customer stock?

Q Let me rephrase the question:

Did Mr. Hyman also tell you you could use the Leasepac stock, the 10 thousand shares for the loan, and do whatever you had to do to get that stock?

A Yes, yes, that is true. Mr. Hyman, he had informed me that Maurice was going to negotiate a loan, yes.

Q And all Maurice Rind did was negotiate a loan, isn't that true?

A He took the stock, but I had informed him that we needed -- that we had to use some customer stock.

Q But you had a lot of customer stock in street names, didn't you?

A Yes, we had.

Q You had stock powers --

A In order to get up this 10 thousand shares we had to use some of customer stock registered in their name, because we didn't have 10 thousand shares in our own name or street name.

Q But that's what you are saying now, right?

A That's what I said --

Q You never said that in the grand jury; you never said that prior to this trail, isn't that true?

A No, I think that has been my statement all along.

Q Does it appear in any of your written statements anyplace?

A I don't know.

Q As a matter of fact, in the last trial wasn't there a concession --

MR. LOWE: Not on that subject.

MR. ANOLIK: I will rephrase the question:

Q Do you know of anyplace else where you ever said that prior to this trial?

MR. LOWE: Said what?

Q Said that Mr.Rind specifically told -- was specifically told that you had to use stock that was not in the street name, that was not under any power of attorney but that was registered in customers' names?

A Yes, I said that before.

Q Were those specific words used?

A I can't say whether the specific words, but the general, the thought, the general idea is there, yes.

Q Isn't it a fact that in all of your testimony previous to this trial, the trial that started last time, that the first time that you ever mentioned anything of that sort was during this trial?

A I don't know.

MR. ANOLIK: I have no further questions.

THE COURT: We will suspend at this time until 2:15.

Please don't discuss the case in the meantime.

(Recess of lunch until 2:15.)

BERKSON1 rd ja 1

AFTERNOON SESSION

2:15 p.m.

(In open court - jury present)

J A M E S G A L L E N T I N E, resumes.

REDIRECT EXAMINATION (Continued)

BY MR. LOWE:

Q Mr. Gallentine, you were asked about Mr. Hyman. What was Mr. Hyman's primary function at Packer, Wilbur during the last six months of the firm's existence?

A His primary function was floor broker on the National Stock Exchange.

Q What does that mean?

A Packer, Wilbur was a member of the National Stock Exchange, and he was the trader on the floor of the National Stock Exchange, trading for the account of Packer, Wilbur.

Q When you say on the floor of the National Stock Exchange, is that an actual physical place?

Q Yes.

Q And was it away from Packer, Wilbur's office?

A Yes.

Q And was Mr. Hyman there during most of the business day?

A Yes.

Q Mr. Brodsky was asking you, Mr. Gallentine, about

some financial difficulties at A. J. Carno in 1974. Do you recall that?

A Yes.

Q And in response to some questions by Mr. Brodsky, you indicated that at A. J. Carno during their financial difficulties you did not engage in the forgery of customer securities or unauthorized use of customers' securities; is that right?

A That is correct.

Q And that was in 1974, right?

A No, thatwas in 19 -- I believe December of '72 and January of '73.

Q When did A. J. Carno go out of business?

A 1974.

Q They went out of business as a result of their financial difficulties; right?

A A capital problem.

Q And it was in 1974 that those difficulties came to a head?

A Yes. Well, that's when they decided to cease doing business, yes.

Q And,of course, you at that time had been caught for what you did at Packer, Wilbur, had you not?

A I don't understand what you are getting at.

Q By the latter part of 1974, Mr. Gallentine, the activities in which you engaged at Packer, Wilbur & Company had been -- you knew that they were well-known by the authorities, right?

A Yes.

Q Now, there is something about what you said in response to questions by Mr. Brodsky that I'm not sure I understood.

I believe you testified that when you were in the grand jury you had confused the time when Berkson knew about the unauthorized use of customers' securities; is that right?

A Yes.

Q Is that what you said?

A Yes. I was confusing --

Q Is that what you said?

A Yes, yes.

Q Now, you also told Mr. Brodsky that the first time you told Mr. Berkson about that was when you found out about the investigation, which you said was in 1973; is that right?

A Right.

Q And you said that you first found out about the investigation when you were called into the U. S. Attorney's

Office; is that right?

A Yes.

Q And you also told Mr. Brodsky that you had a number, maybe 15 trips to the U. S. Attorney's Office over a period of two or three months before you went in the grand jury; is that right?

A Yes.

Q So backing up from your grand jury testimony, you first learned about the investigation, according to your testimony, two or three months before your grand jury testimony?

A Whatever it was that I first went -- was called into the office, yes.

Q And when you testified in the grand jury that Mr. Berkson was aware of the unauthorized use of customers' securities because you had told him about it, you were confused in your mind, you are telling us, and you were thinking of sometime two or three months before the grand jury appearance that youhad told him about it; is that your testimony?

A Yes, it's during that time, just after my first called into the U. S. Attorney's Office, yes, during that period of time, yes.

Q That's what you are telling us now is the first

time you told Mr. Berkson about it?

A Yes.

Q And is it your testimony that you thought that is what you were being asked about when you were in the grand jury?

A My answer to the question was in response to that -- I can't say.

Q Well, the questions to you in the grand jury related, did they not, to the period of time that you were actively working at Packer, Wilbur?

A That's true, but my answer was in relation to the time period prior to that.

Q Prior to what?

A Prior to the grand jury.

Q In other words, you figured because you told Mr. Berkson two or three months before you went in the grand jury, that that was an appropriate answer to give to a question that dealt with two or three years before you went to the grand jury; is that right?

A I didn't really rationalize it, no.

Q Isn't it a fact, Mr. Gallentine, that what you are doing right now is rationalizing?

A I am trying to rationalize it, that's right. Something I didn't do before.

Q You are trying desperately, are you not, to rationalize an apparent conflict between your testimony in the grand jury and your testimony at this trial; isn't that correct?

MR. BRODSKY: I object, your Honor.

THE COURT: Well, it's his own term. I assume he understands it.

Objection overruled.

Q What is your answer, Mr. Gallentine?

A I am trying to get through to you and the jury and everyone present the reasoning behind my statements at the grand jury.

Q Are you concerned, Mr. Gallentine, that having given two totally different answers under oath you might be subject to prosecution for perjury?

A Yes.

Q In any event, Mr. Gallentine, you testified this morning that within a short period of time after receiving the Leasepac stock dividend you told Mr. Berkson about the fact that because some of the customers' stock had been used, those customers might not get their dividend? Did you say that this morning?

Q Then on cross-examination this morning you changed that answer, or at least appeared to. Did you

intend to do that?

A No.

MR. BRODSKY: Objection, your Honor.

THE COURT: Well, he has answered. I will allow it to stand.

Q When did that conversation about the dividend take place?

A Well, as I recall, as I said before, sometime within, say, two or three weeks after the dividend was received and I was working up the dividend schedule.

Q So that, Mr. Gallentine, your testimony to the effect that the first time you told Berkson about the unauthorized use of customers' securities was after you learned about the investigation is incorrect, isn't it?

MR. BRODKSY: I object to that, your Honor.

THE COURT: I will allow it. I wouldn't state the reason, but I will allow it.

Do you understand the import of his question?

THE WITNESS: No.

THE COURT: Let me see if I can get it through to you.

There is an Exhibit 1-C which was introduced and there was an Exhibit 27 introduced which showed that there were stock documents on certain shares which were

eventually sent to the Irving Trust Company.

Do you remember the Irving Trust Company situation?

THE WITNESS: Yes.

THE COURT: You said that that happened on September 11, 1970, because you looked at the certificate. Do you want to look at it, 27-A?

THE WITNESS: You are talking about the Leasepac, yes.

THE COURT: Show him that certificate, 27-A.

(Pause)

MR. LOWE: I believe it is 27, your Honor, a letter.

THE COURT: They are both letters, 27 and 27-A.

MR. LOWE: 27-A is a record from the bank showing the issuance of the stock.

THE COURT: Now, that shows September 11, 1970, doesn't it?

THE WITNESS: Yes.

THE COURT: Then you answered right after that, when did you speak to Berkson the next time, and you said two, three or four weeks later.

THE WITNESS: I understand.

THE COURT: What he saying to you is today you

said that was after the eovent. When you previously testified, you said it was in 1970. That's what he is trying to find out from you.

THE WITNESS: That's true.

Now, the discussion of the forgery of the securities was done just after or shortly after my first visit to your office. That's what I'm getting at. Maybe that's what it is.

Q So you are telling us now that you told Mr. Berkson that the customers' stock was being used as early as 1970?

A Had been used, but I didn't say how or getting into any details as to how it was used or why or anything else. That's what I'm getting at.

The detail of the forging of the stock powers was done right after I went to your office the first time.

Q And that was some two or three months befor June of 1973?

A Whatever. I don't recall how long it was. It might have been six months. I don't know. You have the records. I don't.

Q Well, you said earlier it was two or three months.

A I don't know how many months. I can't remember

the time period. Like I say, I don't know when the first time I came to your office was, how long before the grand jury visit.

Q But it was at that point that you first told Mr. Berkson about the forgery part of the story?

A Yes, at that period of time.

Q What did Mr. Berkson say to you when you told him about it?

A He didn't really say anything about it. He just accepted what I told him, what I explained to him, and he just accepted it. That's all. What is there to say?

Q I'll ask the questions, Mr. Gallentine.

A I'm sorry.

Q Did he express any feeling about it?

MR. BRODSKY: I object to that, your Honor.

THE COURT: I will allow it.

A I don't recall.

Q And it was you who asked him whether it would be a problem for you to continue working at Carno?

A I believe I asked him, yes.

Q What did he tell you about that?

A He just said he would see about it, that's all. Because at thatt me we had --

Q Don't tell me "because." Just tell me what he said, if anything.

A I don't recall what he said.

Q He certainly did say, "You're fired," did he?

A No.

Q Do you ever recall being called into the SEC?

A From which case?

Q Having to do with thesame subject matter as you are here on?

A I don't really remember if I was up to the SEC or not for Packer, Wilbur.

Q By the way, you mentioned something about Packer, Wilbur having some Leasepac warrants.

A Yes.

Q Could you tell the jury what a warrant is?

A A warrant is the right to purchase a stock at a given price over or through a certain period of time.

Q And you have to have money to exercise the warrant; is that right?

A In most cases, yes.

Q Well, how about the specific case of the Leasepac warrants held by Packer, Wilbur? Did they require money to be exercised?

A I don't know the stipulations on the warrants.

Q In your experience is that usually the case, that money is required to exercise a warrant?

A Yes.

Q Now, you testified that you came to my office approximately fifteen times before you went into the grand jury to testify in the grand jury; is that your best recollection of how many times it was?

A Like I say, I don't remember how many times it was. If you want a definite figure, I couldn't give you a definite figure, because I didn't keep score.

Q Well, all I'm asking you for is your best recollection of how many times.

A I don't know how many times. I tried to tell him but he wants a figure. I don't know how many times.

You know as well as I. Can you remember how many times I was in there? I can't.

Q Mr. Gallentine, I'm asking the questions. You just answer them.

Is the answer you have no idea how many times you were there?

A The idea I have is that it was many times, many times.

Q And there is no number that you can put to that, is there?

A No. Over five. Let's say over five times. Mak it that way, over five times.

Q How much of the time you were in my office was spent talking to me?

A Percentagewise?

Q If you can do it that way, sure.

A Most of the time was spent with Mr. Soffler.

Q Doing what?

A Going over the books and records.

Q Now, the last thing I want to ask you about is this: You testified that when you came into my office you told me that Mr. Berkson didn't know anything about what had been going on.

I would like you to do the best you can with your memory being what it is and tell me just when that happened.

A I don't know what you mean.

Q When did you tell me for the first time that Mr. Berkson didn't know anything about the illegal activities you were engaged in, in connection with the customers' stock at Packer, Wilbur?

A I told that -- I told that to you the very first time you asked that question.

Q When was that?

A I don't recall exactly when it was.

Q Who was there when it happened?

A I believe Mr. Soffler, because Mr. Soffler was in his office with us most of the time.

Q As a matter of fact, was there ever a time when he wasn't there?

A No. He left the room occasionally for a few moments, but that's all.

Q There came a time, Mr. Gallentine, did there not, when you came into my office, read a transcript of your testimony before the grand jury, and then came and told me there were parts of it that were inaccurate; is that correct?

A Yes.

Q That was the day after you had a meeting with Mr. Berkson's attorney, was it not?

A Shortly after that, I believe, yes.

Q It was the next day, wasn't it?

A I don't remember if it was the next day or not. That I don't recall.

Q Well, how much time elapsed between the time you met with Mr. Berkson's attorney and the time you came to my office to read your grand jury testimony?

A It was a short period of time.

Q Very short, was it not?

A Yes.

Q It was less than 24 hours, wasn't it?

A Like I say, I don't remember if it was the next day or the day after. This I do not recall.

Q Prior to thatmeeting you had with Mr. Berkson's attorney,you had been in my office to read your grand jury testimony hadn't you?

A Yes, yes, that's right.

Q And on that occasion you didn't tell me anything about it being inaccurate, did you?

A No, I didn't.

Q It was only after you met with Mr. Berkson's attorney that you did that, right?

A That's the way the succession of events followed, yes.

Q And when you met with Mr. Berkson's attorney, you signed a piece of paper, didn't you?

A No, no.

Q Did there come a time when you signed a piece of paper having to do with this case that was given to you by either Mr. Berkson or Mr. Berkson's attorney?

A Yes.

Q When was that?

A That was sometime ago. Over a year ago. I don't know if there is a date on it or not.

MR. LOWE: I would like to have this document marked Government's Exhibit 43 for identification, please.

* * *

(Government's Exhibit 43 is marked for identification.)

BY MR. LOWE:

Q I would like you to take a look at the last page of Government's Exhibit 43 for identification.

Is that your signature?

A Yes.

(Continued on next page)

Q Look just below your signature. Have you read what is below your signature?

A Yes.

Q Having read it does that refresh your recollection as to when you signed the piece of paper?

A All I can go by is the date. It says December 1975.

Q That was somewhat less than a year ago, was it not?

A Yes. December 1975 is five months ago.

Q When did you, for the first time, tell Mr. Berkson what was in your grand jury testimony?

MR. BRODSKY: If ever.

THE COURT: If ever.

A I don't remember when I first told him that.

Q Did you ever tell him what was in your grand jury testimony?

A I don't recall. I don't recall mentioning it at all.

Q Did you ever tell --

A Pardon?

Q Are you telling us that you don't recall ever telling Mr. Berkson about what you said in the gand jury?

A That's right, I don't recall ever mentioning it.

Q Did you tell Mr. Berkson that you had been in the grand jury?

A Yes, I had mentioned to him that I had been called down to the grand jury, yes.

Q Didn't Mr. Berkson ask you on any occasion what you said in the grand jury?

A No, he didn't.

MR. LOWE: I will offer Exhibit 43 in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

xx (Government's Exhibit 43 for Identification received in Evidence.)

Q This document is, in fact, an affidavit, is it not?

A Yes, that's true.

Q Without reading the affidavit in detail, the sum and substance of it is, is it not: "I, James Gallentine, hereby swear that . bert Berkson knew nothing about nothing."

Isn't that about what it says?

A No. It says he knew nothing about the use of the customers' securities at the time that they were used.

Q Did you at any time prior to the proceedings that took place in May tell any representative of the government about that document?

A No.

Q When you signed this document, Mr. Gallentine, were you aware that it was contradictory to the testimony that you had given before the grand jury?

A No.

Q Was that because you could not remember what you had said before the grand jury?

A Right.

Q The next time after you signed this document that you read your grand jury testimony did you remember that you have signed this document?

A No, I didn't remember this document until Mr. Brodsky had shown it to me.

Q Do you have a very convenient memory?

MR. BRODSKY: Objection, your Honor.

THE COURT: The question is kind of amorphous.

Q Well, let me put it to you this way, Mr. Gallentine: Is it a fact that you remember what suits your purpose on any given occasion and nothing else?

MR. BRODSKY: Objection, your Honor.

A No, I wouldn't say that.

Q No, I don't suppose you would say that.

MR. LOWE: I have no further questions.

RECROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Gallentine, the first time you ever met me was sometime a week or so before this proceeding there was some testimony about in May, is that correct?

A Yes.

Q That would have been, to the best of your recollection, the first or second week in April, 1976?

A It would be around that time.

Q And you and I never met before that time, did we?

A No.

Q And this affidavit, Exhibit 43, is dated December 18, 1975, some four or five months before that, right?

A Yes.

Q Now, when I met with you, Mr. Gallentine, it was in your attorney s office, is that right?

A Yes.

Q His name is Fred Hafetz, is that right?

A Yes.

Q And you and I talked and he was present all the time, was he not?

A Yes.

Q And I asked you to tell me what you knew about

Mr. Berkson's participation at Packer, Wilbur, if anything, isn't that correct?

A Yes, that's true.

Q And I asked you to tell me the truth, did I not?

A Yes.

Q And you told me at that time that Mr. Berkson, at least as far as you knew, never knew about any forgeries and any unauthorized use of customers' securities, isn't that correct?

A Yes, at the time that they were used, that's right.

Q And the entire conversation that you and I had at that time in the presence of your attorney, Mr. Hafetz, lasted about 15 minutes, did it not?

A It was a short time.

MR. BRODSKY: Your Honor, may I read the affidavit to the jury?

MR. LOWE: No objection.

THE COURT: Go ahead.

MR. BRODSKY: This is an affidavit of James Gallentine dated December 18, 1975 (reading Government's Exhibit 43 in Evidence to the jury).

MR BRODSKY: Then it says on the bottom:

"Sworn before me this 18th day of December, 1975, Michael D. Giovanni, Notary Public."

BY MR. BRODSKY:

Q You recall signing the affidavit on that day before a notary public, do you not?

A Yes.

Q Now, Mr. Gallentine, you also recall reading each page before you signed the affidavit, did you not?

A Yes.

Q And initialing each page in several different places before you signed the affidavit?

A Yes.

Q And all of these initials on Exhibit 43 are yours, are they not?

A Yes.

Q And the affidavit is true to the best of your knowledge, you said here today, is it not?

A Yes.

BY THE COURT:

Q Did you listen carefully to what he read?

A Yes.

Q You heard the whole thing?

A Yes.

Q When did you testify that you went to work for

this company here today?

A In 1965 or 1966.

Q Did you hear it said there November of 1964?

A No, I didn't hear that, no.

Q That's not accurate, is it?

A Pardon? In 1964?

Q The affidavit is not accurate as to that, is it?

A I would have to consult --

Q I am not asking whether you have to consult or you don't have to consult. You heard it read here in court, and I am telling you now that that affidavit, as I heard it read, said November of 1964.

Now, is that accurate or isn't it?

A Then it is inaccurate. To my recollection I started in 1965 -- 1965.

Q But you swore in that affidavit that you started in November of 1964.

Then let me put another question to you: When you signed that affidavit had you already told Mr. Berkson, when you went to work for Carno, that you had forged the certificates?

A No, that was afterwards.

Q This is December of 1975. You told him after that?

A I told him in 1973 just prior to --

Q That's the point I'm getting at. Now, in this affidavit did you ever say anything about that?

A No.

Q You said in this affidavit that you never told anything at any time?

A Right, that's right.

Q Well, that's not correct, then, is it?

A That's right, that's not true.

Q Were you told you could change any part of the affidavit if you found it to be incorrect?

A When I was signing that I was referring to the period of time, the same as I explained in all my testimony, I am referring to the time that the customers' securities were used.

Q Were you told that you could change any part of the affidavit if it didn't accord with your recollection of it?

A No.

Q Well, what were you told, just to sign it and initial it on every page?

A I guess he asked me to read it and initial it and sign it, yes, as I read it, yes.

THE COURT: Go ahead, Mr. Brodsky.

BY MR. BRODSKY:

Q Well, you did read it before you signed it, did you not?

A Yes.

B2 Q And after having read it, did you say at the time that any portion of it was inaccurate?

A No.

Q I mean, you didn't say, "Well, that part is inaccurate, I will change it," did you?

A No.

Q And you read it, you read it carefully, did you not?

A Yes.

Q And you signed it, is that correct?

A Yes.

Q And you made no objection at the time to the effect that one or more points might be inaccurate, is that correct?

A That's true.

Q And in those statements in signing the affidavit you had in mind that you were --

MR. LOWE: I am going to object to a leading question about what he had in mind.

THE COURT: Yes. It did start off with a leading

question.

MR. BRODSKY: I thought this was cross-examination.

THE COURT: It may be cross-examination, but I think in this area you are adopting him as your witness.

MR. BRODSKY: Your Honor, I'm only asking a question about an affidavit --

THE COURT: But I will not allow a leading question even if it is cross-examination. I think that's within my discretion.

MR. BRODSKY: It surely is, your Honor.

THE COURT: Let him tell what the fact is rather than put it in a question.

BY MR. BRODSKY:

Q Well, in reading and executing the affidavit what period of time were you referring to?

A I was referring to the period of time from August of 1973 through March of 1971.

Q The period of time when --

A When Packer, Wilbur was in business and --

Q I'm sorry, you'll have to speak a little louder.

A When all of this took place.

Q Okay.

Sometime before the first proceeding, or the proceeding

in May, you did visit Mr. Lowe, did you not?

A Yes.

Q And you did tell him, did you not, that your grand jury testimony was inaccurate?

A Yes.

Q Now, there was some testimony about Mr. Hyman and his activity on the floor of -- was it the National Stock Exchange?

A Yes, at that time, yes.

Q Packer, Wilbur had a direct telephone line to Mr. Hyman's position on the floor of the Stock Exchange, did it not?

A I believe so, at the trading desk.

Q So that it was possible to get him on the telephone literally instantaneously, isn't that correct?

A Yes.

MR. BRODSKY: Thank you. I have no further questions.

BY MR. ANOLIK:

Q Mr. Gallentine, when you were talking about the Leasepan stock and the position of Packer, Wilbur in that stock, didn't they warrants that they could exercise in that stock?

A I was told that they had warrants, yes.

Q Now, these were unregistered warrants, though, weren't they?

A I don't know what they were -- I don't know the status of the warrants. I was told that we had 10 thousand warrants that they were going to exercise; that's all I was told.

Q But if the warrants were for unregistered stock--

A I don't know what they were for.

Q Well, if you are obtain stock through unregistere warrants, you get unregistered stock, don't you?

MR. LOWE: That calls for a legal conclusion. I don't think he is qualified.

THE COURT: Sustained, unless you lay a foundation.

Q You don't know whether they were registered or unregistered, is that correct?

A That's correct.

Q And you knew they had a positon in those warrants

A I was told that they had warrants that could be exercised; this is what I was told, I don't know.

Q Who told you that?

A Mr. Rind and Mr. Hyman.

Q Together?

A No.

Q When?

A Sometime during this period of August, September; I don't recall.

Q Let me ask you this: Did you keep any notes as to --

A No, I did not, no.

Q Let me finish the question.

Did you keep any notes as to conversations in August or September of 1970?

A No.

Q You had no reason to keep notes, did you?

A That's right.

Q So you didn't make any independent notation of any conversations you had with Mr. Rind at that time, isn't that so?

A That's right.

Q Yet you state that you cannot recall conversations you had with Mr. Lowe concerning your own liberty; that you can't recollect, is that right?

A That's right.

Q Now, you were many times in the U.S. Attorney's office, you stated, with Mr. Lowe, is that right?

A Yes.

Q Many times?

A Yes.

MR. ANOLIK: May I have this marked for identification, your Honor.

MR. LOWE: It is 3501.

Q 3501 for Identification is your grand jury testimony?

A Yes.

Q You have read that before, have you not?

A Yes.

Q In the grand jury you were asked to tell everything you knew about this case, in effect, isn't that so?

MR. LOWE: I will object to that, your Honor. He was asked questions.

Q You were asked questions and you gave answers, is that right?

A Yes.

Q And you knew at that time that these questions and answers were designed to inform the grand jury of certain events, isn't that true?

A That I know.

Q Yes, you know you were there to --

A I was there to answer questions, yes.

Q Did you know that the grand jury had the power to indict?

A Yes.

Q You knew that, that was their function, isn't that true?

A Yes.

Q Now, in your grand jury testimony did you ever state anywhere in that entire testimony, or were you ever asked, for that matter, about anything that Mr. Rind ever said to you about forged securities, or where you told him that "You know, we have to use these securities and we have to sign the customers' names to them, and we don't have enough securities, so we have to use customers' securities?" Did you ever say that in your grand jury testimony?

A I don't believe so.

Q You don't believe so?

A I don't believe so.

Q If I told you it was not there, would you accept that?

A Yes.

Q Mr. Gallentine, you stated that your sentence in this case has been adjourned, is that correct?

A Yes.

Q Who told you that has been adjourned?

THE COURT: Sustained. It is not proper recross. Nothing was said about this at the time.

MR. ANOLIK: I thought --

THE COURT: Nothing was said about an adjournment that I'm aware of.

MR. ANOLIK: He testified, as I recall --

THE COURT: It was brought out by you.

MR.ANOLIK: No, by someone else.

MR. BRODSKY: I did.

THE COURT: All right, go ahead. But it seems to me everybody has covered this to a fare-thee-well. I don't know how many times you are going to go over this.

MR. ANOLIK: I never went over it.

THE COURT: Well, go ahead, go over it.

As a matter of fact, I take judicial notice that there is nobody that knows when that sentence was adjourned to because I am the judge that has it on June 7, and June 7th hasn't come around, and nobody has appeared before me, and I know nothing as far as my own personal knowledge is concerned. My law clerk may know something about it.

(Law clerk approaches the bench and confers with the Court.)

THE COURT: I understand the Probation Office called and wanted something to be put over, and it is put over for that reason. It was not brought to my attention until just now.

MR. ANOLIK: That is all I wanted to get.

THE COURT: But that is the probation people.

MR. ANOLIK: All right.

THE COURT: The Probation Office was informed of it.

MR. ANOLIK: Very well.

B3 BY MR. ANOLIK:

Q Now, you also testified earlier that you didn't have an attorney, and yet you just recently said that when you signed Exhibit 43 that you were represented by an attorney by the name of Fred Hafetz, isn't that so?

A Which is Exhibit 43?

Q That is the affidavit that you gave.

A No, I didn't have an attorney at that time. I only had an attorney, Mr. Hafetz, since a very short time.

Q You mean --

A Just prior, just very recently.

Q So in all your negotiations with the United States Attorney you had no attorney, is that right?

A I had Mr. Hafetz just prior to the last, the previous trial.

Q Well, let me ask you this: Would it be fair to say, though, that prior to your entry to the grand jury you had no attorney?

A No, that's right, that's true.

Q Can you tell me whether or not when you were given your promises or your representations by the government, did you ever discuss that with an attorney?

A Yes. That was through Mr. Hafetz.

Q You did discuss that with Mr. Hafetz?

A Yes.

Q And is that how the agreement was worked out between the government and you?

A I believe so.

Q So your testimony is that it was just very very recently that that occurred?

A Yes.

Q And you persist in your testimony, do you not, that prior to that time you never knew what your deal was going to be?

A That's right.

Q So it would be within the last few months that for the first time you found out that the government was going to dismiss 9 out of 10 counts against you and that you would only be sentenced on one charge, is that right?

A Yes, right.

Q And that charge carries only a maximum of two years, isn't that right?

A Yes, I believe so.

Q Did you also discuss with your attorney what you would be expected to do by the government?

A No.

Q He never told you that?

A He just -- yes, to cooperate with Mr. Lowe.

Q And you have been cooperating with Mr. Lowe, is that your testimony?

A Yes.

MR.LOWE: I move that that be stricken. That calls for a conclusion.

THE COURT: Yes I'll strike it out.

MR. ANOLIK: I have no further questions.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Gallentine, just to clear up some of the dates, the indictment in this case was filed in June of 1975, do you remember that?

A I don't recall it.

Q Last summer?

A It was last summer sometime, that's right; I don't recall the exact date.

Q Do you remember coming to court last summer in connection with the indictment?

A I don't recall that I did come to court --

Q Take a look at this, which is a copy of it, an official copy of the indictment. Take a look at the entries on the back cover and see whether that refreshes your recollection as to whether you went to court last summer.

A Yes, right. I don't remember -- I remember appearing in court -- exactly what date with Mr. Goldman.

Q Who is Mr. Goldman?

A Mr. Hafetz' partner.

Q So at least as early as last summer you had a lawyer, right?

A Yes, that's right, yes.

Q It wasn't just before the proceeding last month, was it?

A No. I got the attorney to make the first appearance in court, yes, for the first appearance in court.

Q And that was almost a year ago?

A Yes.

Q Mr. Gallentine, in connection with this so-called deal or agreement that you have with the Government of the United States, isn't it a fact that you were told the very first time you met with me in the United States Attorney's office exactly what you could expect?

A Yes, you did mention -- yes.

Q Why then, Mr. Gallentine, did you persist in telling -- in saying in response to Mr. Anolik's questions that you just made your deal a short time ago?

A Wait a minute, now. When I first appeared -- when I first came to your office, you were telling me of the seriousness of it, and what could happen, and so on, yes. There was no mention of any deal or cooperation.

Q Weren't you told that if you cooperated and told the truth and testified truthfully about everything that happened that you wuld only be prosecuted on one count of violating the securities laws? Isn't that what you were told the very first time you came in?

A I don't recall that at all, because there weren't any counts at that time. The indictment hadn't been handed down. You were just beginning the investigation

Q And you knew that we knew that you had committed a series of crimes; isn't that right?

A A series?

Q Yes.

A As far as I was concerned, it was just one crime, that's all. The forging of the stock certificates.

Q Each time you did it, it is a crime, right? It was a series of crimes, was it not?

A Putting it in those words, yes.

Q In any event, you knew the first time you were in the office that we knew you had done it, didn't you?

A That's right.

Q And were you not told that no matter how many times you had done that crime, if you cooperated and testified and told the truth, you would only be required to be prosecuted for one count, one charge?

A That I don't recall, no I just don't remember that at all.

MR. LOWE: I have no further questions.

MR. BRODSKY: No questions.

MR. ANOLIK: No questions.

THE COURT: Well, I suppose that the rumor started to fly when this investigation came about and you were aware of some of the people in the cage knowing about the investigation going on, weren't you, the people whom you had asked to forge the names?

THE WITNESS: We were all called into Mr. Lowe's office.

THE COURT: And you knew that they were called down to Mr. Lowe's office, and you knew that they were the ones that you had directed to sign the forgeries on the stock, didn't you?

THE WITNESS: Yes, that's true.

rd ja 3 Gallentine - Caplan

THE COURT: That was knowledge you had at the time you were talking to Mr. Lowe?

THE WITNESS: Yes, that's right.

THE COURT: All right.

You may step down.

(Witness excused.)

S A M C A P L A N, called as a witness on behalf of the Government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Caplan, back in 1970 and the early part of 1971, did you have a brokerage account with a brokerage firm known as Packer, Wilbur & Company, Inc.?

A Yes, I did.

Q With whom did you deal at that firm?

A Mr. Berkson.

Q Do you see Mr. Berkson in court?

A Yes.

Q Is he the gentleman who just stood up?

A Yes.

Q Mr. Caplan, who is Sally Kaplan?

A My wife.

Q Did there come a time when you and your wife,

in some instances both of you together, purchased some stock in a company known as Leasepac Corporation?

A Yes, we did.

Q Did you purchase that stock through Packer, Wilbur & Company?

A Yes, we did.

Q How much did you purchase?

A Originally purchased 300 shares.

Q Did you ever receive your stock?

A Yes, I received the stock and returned it at times, both to Mr. Berkson of Packer, Wilbur and at another time had been transferred to another company and brought back to Packer, Wilbur.

Q When you returned the stock to Packer Wilbur, what, if anything, did you tell Packer, Wilbur to do with it? Specifically whom did you tell?

A At the particular time I told Mr. Berkson to use his judgment of selling the stock at his discretion.

Q Was some of the stock sold for your account?

A At two different times 100 shares each had been sold.

Q And did you receive the proceeds of those sales?

A Yes, I received the proceeds of both sales.

Q Did you ever receive the remaining 100 shares

back?

A No, I did not.

Q Did you ever receive payment from Packer, Wilbur & Company for those remaining 100 shares?

A Not from Packer Wilbur.

Q Did you ever request Packer, Wilbur to deliver that 100 shares to another firm?

A Yes, I did.

Q Was it the first time you made such a request orally or in writing?

A I believe it was done orally. To be honest with you, by phone, I believe.

Q To whom did you speak?

A There I honestly cannot tell you whether I spoke to Mr. Berkson's secretary or to him directly. It's too far back for me to make that statement.

Q What happened after you requested that your stock be delivered to another firm?

A At that time I believe after a couple of requests with his secretary, which I can't say how many times, I left for Europe on one of my business trips. So I can't say what happened after that at that particular time.

Q Well, was the stock delivered as you requested?

A No. When I came back I found out that Packer, Wilbur was out of business.

Q Did there come a time when you wrote a letter regarding the delivery of your stock to another firm?

A Yes, I did.

Q I am showing you Government's Exhibit 28 for identification, Mr. Caplan. Is that the letter that you sent to Packer, Wilbur?

A Yes, It is.

MR. LOWE: The Government offers 28 in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

* * * (Government's Exhibit 28 is received in evidence.)

Q Mr. Kaplan, this letter is dated March 4, 1971, on your letterhead, addressed to Mr. Robert Berkson, Packer, Wilbur & Company, 160 Water Street, New York. This letter is to authorize you or your firm to deliver to Weis, Voisin . Canady for your account a certain amount of cash and stock certificates in two different companies, one of which was 100 shares of Leasepac Corp. stock.

Did you receive everything except the Leasepac stock?

A Yes, I did.

Q Did youhave any conversation with Mr. Berkson after this letter?

A Yes, I did.

Q About your stock?

A Yes, I did.

Q When?

A I would say, and I'm going by my memory, that it may have been a week or two or a few calls after that.

Q Was it on the telephone?

A Yes.

Q What was the conversation?

A Mr. Berkson told me he would take care of it with his secretary --

MR. BRODSKY: I object to the conversation with the secretary.

THE COURT: Did you speak with Mr. Berkson or the secretary?

THE WITNESS: Both Mr. Berkson and the secretary at different times.

THE COURT: Only tell us what Mr. Berkson said to you.

THE WITNESS: That he would take care of it.

Q Mr. Caplan, did Mr. Berkson ever tell you that he didn't have any stock in your name?

A I cannot say for sure. I would not say yes or no to that. It would be very difficult for me to go back to that conversation.

Q Well, do you remember him telling you such a thing?

A I do not recall.

Q Did Mr. Berkson ever tell you that all of the stock with the exception of six shares registered in your name ahd been cancelled prior to the end of 1970?

MR. BRODSKY: I object, your Honor.

THE COURT: Well, it's a leading question, but I will allow it.

Overruled.

A Well, with the Court's permission, I have some records there. I'd like to look that up. I'd like to go back to those days. You can't get a straight answer from me right now. It would be impossible. You're going back six years or five years.

THE COURT: How much was the worth of the stock?

THE WITNESS: The worth of the stock --

THE COURT: How many shares at that time?

THE WITNESS: Actually, from the receivership I received twelve dollars --

THE COURT: I'm not talking about what the

receivership was.

At the time it happened when you put them in there.

THE WITNESS: There again, it was higher than $10 for what I paid for it. What it was actually, I can't tell you, except possibly from my records I may be able to tell you.

THE COURT: Are you saying they were worth about $1,000?

THE WITNESS: Yes, more than $1,000.

THE COURT: How much do you think they were worth at that time, your best recollection?

THE WITNESS: My best recollection would be $12 each, $1200.

THE COURT: $1200?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. LOWE:

Q Mr. Caplan, I would like you to look at the stock certificates that are part of Government Exhibit 28-A for identification. Look at the signatures on the back of each certificate and tell me which, if any of them, are yours

A These two are not my signature.

Q Which two are not yours?

A The top two.

Q Actually starting from where the exhibit tag is, the last two, is that right?

A Yes.

Q The others are your signature?

A My signature and my wife's signature, yes.

Q And the last two are not your signature; is that right?

A They are not.

MR. LOWE: The Government offers Exhibit 28-A in evidence.

THE COURT: Did you authorize anybody to sign your name on those certificates?

THE WITNESS: Now, there is a question. I had a discretionary account with Mr. Berkson at Packer & Wilbur. I do not know the legal status of that, whether they needed a power of attorney for my signature or not, so I can't say. Probably if they had signed it, I would never have known the difference.

THE COURT: Is your wife's signature on there?

THE WITNESS: No, my signature only.

Q Mr. Caplan, did you ever authorize anyone at Packer, Wilbur to sell the stock that was in your name and keep the proceeds for themselves?

A No.

MR. BRODSKY: I have no objection.

MR. ANOLIK: No objection.

(Government's Exhibit 28-A is received in evidence.)

MR. LOWE: I have no further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q You say that Packer, Wilbur had a discretionary account, as far as you were concerned; is that correct?

A That's correct.

Q Would you explain to the jury what that means, please?

A It means that my broker can buy and sell stock and use the cash in my account to do whatever they wish with it, without calling me or by virtue of requesting permission. They can buy and sell and use my funds for their purpose, trusting them thoroughly.

THE COURT: But the funds didn't go into your account?

THE WITNESS: I owned the money, I owned the stock, but on a discretionary account, which was done very often, the broker could do what he wanted but it was my money.

THE COURT: When you say he could do what he wanted, could he put it in his own account, in with his own money?

THE WITNESS: No, he couldn't.

Q Mr. Kaplan, in this case at Packer, Wilbur, Mr. Berkson was the person at Packer, Wilbur who had the discretion; is that correct?

A That's correct.

Q In other words, he could decide on his own without calling you whether or not to sell or hold a particular security of yours; is that correct?

A Absolutely, that's right.

Q Now, I think you said, Mr. Kaplan, that there were 300 shares of Leasepac that you had sent to Packer, Wilbur; is that correct?

A Well, at times it is sent to them, whether 100 had been sold or 200 had been sold and the third 100 had been with them.

Q I'm trying to find out whether you sent the 300 shares of Leasepac to Packer, Wilbur.

A You mean the time or date?

Q Approximately.

Q I could not even approximate.

Q Well, if you look at Exhibit 28, which is dated

March 4th, would it help, going back from that date?

A Possibly.

(Pause)

A As of this date there could have only been 100 shares due me.

Q I think there is no question about that. Maybe this record, 28-A, will help.

I am trying to get at least an approximation of when you sent the 300 shares to Packer, Wilbur. Maybe this record here, 28-A, will help you, if you look at some of these things.

A I have confirmations with me, if that will help you.

MR. BRODSKY: May he look, your Honor.

THE COURT: Go ahead.

(Pause)

A I have here a date of October 13, 1970, that we sold 100 shares.

I have another date here -- no, this is the same one. It was a transfer.

I have another one here, June 11, 1969, that the other 100 shares was sold.

In other words, June 11, 1969 there were 100 shares sold of Leasepac. October 13th was a confirmation

rd ja 14 Caplan - cross

of sold, 100 shares of Leasepac.

Those were the 200 that were sold.

Q That's October 13, 1970?

A That's right, and June 11, 1969 for the other 100.

Q I have that. Now, in each of those cases was the stock sold by Mr. Berkson when he used his discretion to sell it?

A Positively. Packer, Wilbur. I dealt with no one else but Mr. Berkson, except his secretary would take instructions to give to Mr. Berkson at times.

Q My point is, in connection with those 200 shares, on each occasion Mr. Berkson sold the stock without conferring with you?

A Yes.

Q In accordance with his discretion, is that correct?

A Yes.

Q On each of those occasion the proceeds of the sale of the stock were deposited in your account?

A Went in my account, of which I have a record.

MR. BRODSKY: No further questions.

MR. ANOLIK: I have no questions at all, your Honor.

(Witness excused)

MR. LOWE: The Government calls Melvin Mayerson.

M E L V I N M A Y E R S O N, called as a witness on behalf of the Government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q What is your profession, sir?

A I am a dentist.

Q Dr. Mayerson, where do you reside?

A Dayton, Ohio.

Q And who is Elaine J. Mayerson?

A My wife.

Q Did you and your wife have a brokerage account or accounts at the brokerage firm Packer, Wilbur & Company during the period of time 1970 and the beginning of 1971?

A Yes, sir.

Q And did there come a time when and/or your wife or both of you purchased stock in a company known as Leasepac Corporation?

A Yes, sir.

Q Can you tell us how much stock you bought?

A There were two purchases made; one for 100 shares, one for 200 shares.

Q Was the one for 100 shares in your wife's name?

A Yes.

Q And the one for 200 shares?

A I thin' was in my name.

Q Did you ever receive your stoc

A Yes. And I returned it to the Packer, Wilbur Company for safekeeping.

Q How about your wife?

A She received it and I returned that for safe-keeping.

THE COURT: When you say you returned it, by what means did you return it?

THE WITNESS: By hand.

THE COURT: You delivered it by hand?

THE WITNESS: Right. The brokerage office was across from my office.

Q You returned it to the Dayton, Ohio office of Packer, Wilbur, is that right?

A Yes, sir.

Q Now, did you ever authorize Packer, Wilbur to sell the stock?

A No, sir.

Q Did you ever authorize anyone at Packer, Wilbur to use the stock for any purpose whatsoever?

A No sir.

Q Did you ever authorize anyone at Packer, Wilbur to sign your name to a stock transfer power?

A No, sir.

Q Did you or your wife ever authorize anyone at Packer, Wilbur to sign her name to a stock transfer power?

A No, sir.

Q After you delivered your stock to Packer, Wilbur or returned it to them, did you ever get it back?

A No, sir.

Q Did Packer, Wilbur & Company ever pay you any money for your stock?

A No, sir.

Q Directing your attention to Government's Exhibit 22 for identification, and specifically to what appears to be the signature of Elaine J. Mayerson on the back thereof, is that your wife's signature?

A No, sir.

MR. LOWE: The Government offers Exhibit 22 in evidence.

MR. ANOLIK: No objection.

MR. BRODSKY: No objection.

(Government's Exhibit 22 is received in evidence.)

MR. LOWE: No further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Dr. Mayerson, the name of the broker that you used at Packer, Wilbur was Mr. Fitterman, was it not?

A That's correct.

Q You don't know a man by the name of Robert Berkson, do you?

A No.

Q Never met him in your life?

A No, sir.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q You don't know Maurice Rind, do you?

A No.

MR. ANOLIK: No further questions.

(Witness excused)

(At the side bar)

MR. BRODSKY: With respect to the last witness, Mr. Lowe asked the witness whether or not he ever received any money for his stock.

MR. LOWE: From Packer, Wilbur.

MR. BRODSKY: I understand. I think that gets lost, though.

The point I am making is this: I think it is

rd ja 19

improper to have evidence that these people lost money. I know there are some cases in our Court of Appeals that says that it is improper, stock fraud cases, to show that an active customer lost money.

The impression that is made, even when you asked the question the way you did, Mr. Lowe, is that they lost money on it.

I would just ask in the future that we not have that question. It is a prejudicial answer.

THE COURT: The conspiracy charge is threefold, all of which are based on defrauding people. If they lose money, it seems to me they are defrauded in a way.

MR. LOWE: The problem is this: All of these people eventually got paid off by SIPC. If you want to bring that out, you go right ahead.

MR. BRODSKY: I don't want to bring it out at all.

MR. LOWE: The fact is that if Packer, Wilbur had sent them money for that stock, they wouldn't be ripping them off. I have to prove that Packer, Wilbur didn't pay them.

MR. BRODSKY: I don't agree.

MR. LOWE: I don't care whether you agree or not. The point is I am entitled to prove that Packer,

rd ja 20

Wilbur acted improperly with respect to their stock. They neither gave it back nor paid for it, because either thing would be an exculpation.

I am entitled to prove there is nothing like that.

If you want to prove they didn't lose any money, I will be glad to ask them. I have refrained from asking them because it was my understanding that the insurance company paid them off. You can't have it both ways.

MR. BRODSKY: I don't want it both ways. I thin it's enough that these certificates were forged and they were sold for the benefit of Packer, Wilbur. He doesn't have to prove the next thing, the next fact, which is that these people didn't get their money back from Packer, Wilbur.

Obviously, if these certificates were sold, pledged, they were used for the benefit of Packer, Wilbur. There is no allegation in the indictment that any particular customer lost money. It is improper, and I say prejudicial to do it.

THE COURT: In the absence of a case which says it is strictly forbidden, I would think I have discretion in this area.

MR. BRODSKY: I don't have the citation to

rd ja 21

the case, but I do have a clear recollection and I hope I'm right. I could try to get it over the weekend.

THE COURT: If you get the case, I will read it and rerule at that time. At this time I overrule the objection.

MR. ANOLIK: I join in the objection.

MR. LOWE: I have no objection to instructing the jury that the fact that anybody may have lost money is not an element of the crime.

THE COURT: I think that is a proper request at the time the jury is charged. Just like this check-kiting is not evidence of this crime either.

MR. LOWE: We are entitled to prove a negative in order to not have the jury think they might not have gotten their stock but the money. They didn't get anything, neither stock nor money.

THE COURT: That amounts to a fraud, which is the essence of the charge.

MR. LOWE: The question is when the stock was sold, where did the money from the sale go? We don't know other than by Gallentine's testimony that it went into the bank account of the Packer, Wilbur Company and out in the ordinary course of business.

The jury could think that some of the checks

rd ja 22

went out to those customers who didn't get their stock, unless those people testified that they didn't get any money either.

I think that's why it is totally relevant to prove they didn't get any money.

MR. BRODSKY: I disagree.

Without at the very least at this point charging the jury that there is no evidnece that any of these people lost any money and that's not part of this case?

THE COURT: I will decline to do it.

After you bring the case in and I read it, I may go along with it. At this point I am not satisfied with what the law is in this area, except as I have indicated that I think it is allowable at this time.

You have your exceptions.

(In open court)

MR. LOWE: The Government calls Mr. Jeffrey Goldman.

J E F F R E Y G O L D M A N, called as a witness on behalf of the Government, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Goldman, back in 1970 and the early part of 1971, did you have a brokerage account at a brokerage firm known as Packer, Wilbur & Company?

A Yes.

Q And did there come a time when you purchased through Packer, Wilbur & Company 300 shares of Leasepac Corporation stock?

A Yes.

Q Did you ever receive the stock?

A No.

Q Did you ever receive any money from Packer, Wilbur & Company for the stock?

A No.

Q Did you authorize anyone at Packer, Wilbur & Company to use the stock in any way?

A No.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name to a stock transfer power?

A No.

Q Directing your attention, Mr. Goldman, to Government's Exhibit 21 for identification, I ask you to look at the signatures on the back that purport to be

your signature and tell us whether or not they are yours.

A No, they are not.

MR. LOWE: The Government offers 21 in evidence.

MR. ANOLIK: No objection.

MR. BRODSKY: No objection.

(Government's Exhibit 21 is received in evidence.)

MR. LOWE: No further questions.

MR. BRODSKY: No questions.

MR. ANOLIK: No questions.

THE COURT: You may step down.

(Witness excused)

MR. LOWE: The Government calls Rudolph Rado.

R U D O L P H R A D O, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Rado, back in the early part of 1970 and the early part of 1971, did you have an account in a brokerage firm known as Packer, Wilbur & Company?

A I did.

Q Did there come a time when you purchased 300

shares of a stock known as Leasepac Corporation through Packer, Wilbur & Company?

A I did.

Q And did you ever receive your stock?

A I never received my stock.

Q Did you ever receive any money from Packer, Wilbur & Company for your stock?

A I never received any money from Packer, Wilbur for that stock.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use your stock in any way?

A No, I didn't.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name to a stock transfer power?

A I did not.

Q Directing your attention to Government's Exhibit 6-D for identification, I ask you to look at the signature on the back thereof that purpots to be yours and tell us whether or not in fact it is.

A That is not my signature.

MR. LOWE: Goverment offers Exhibit 6-D in evidence.

MR. ANOLIK: No objection.

MR. BRODSKY: I have no objection.

rd ja 26 do - direct/cross

THE COURT: Did you have that certificate in yourpossession?

THE WITNESS: Never did.

THE COURT: You never saw it at all?

THE WITNESS: Never seen it.

THE COURT: All right.

(Government's Exhibit 6-D is received in evidence.)

THE COURT: Did you get a confirmation of the sale?

THE WITNESS: Yes, I did.

THE COURT: How did you get the confirmation?

THE WITNESS: Through the mail.

THE COURT: All right.

MR. LOWE: No further questions.

MR. ANOLIK: No questions.

CROSS-EXAMINATION

BY MR. LOWE:

Q The man you dealt with at Packer, Wilbur was Mr. Fitterman, was it not?

A I believe it was Mark Fitterman.

Q It was not Mr. Berkson, was it?

A No.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q It wasn't Mr. Rind, was it?

A I never knew that gentleman.

THE COURT: You may step down.

(Witness excused.)

MR. LOWE: The Government calls Eleanor Melling.

E L E A N O R M E L L I N G, called as a witness on behalf of the Government, having been first duly slworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mrs. Melling, back in 1970 and '71, did you have a brokerage account at a brokerage firm known as Packer, Wilbur & Company?

A Yes, I did.

Q With whom did you deal at that firm?

A Mr. BErkson.

Q Do you know Mr. Berkson personally?

A No, I don't.

Q Had you ever met him?

A No.

Q You spoke to him only over the telephone?

A Yes.

Q How would you get him on the telephone?

A I would call and ask to speak with him.

Q Where would you call?

A The firm.

Q Packer, Wilbur?

A Yes.

Q And ask for Mr. Berkson?

A Yes.

Q And did you do that on more than one occasion?

A Yes, I did.

Q Did someone come on the phone and identify himself as Mr. Berkson?

A Yes.

Q Did that happen on more than one occasion?

A Yes.

Q Was it always the same voice?

A Yes.

Q Mrs. Melling, did there come a time when you purchased some stock in a company known as Leasepac Corporation through Packer, Wilbur & Company?

A Yes.

Q Did you ever receive the stock that you purchased

the actual physical certificate?

A No, I did not.

Q After the purchase did there come a time when you spoke to Mr. Berkson about selling it?

MR. BRODSKY: I object, your Honor.

THE COURT: Overruled.

A Yes.

Q When was the first such occasion?

A Well, I really don't remember dates at all. It was a few months later, anyway. I don't remember what dates they were.

Q Well, do you remember what year it was?

A Oh, it was maybe 1970, '71.

Q We know, Mrs. Melling, that Packer, Wilbur went out of business in about February of 1971. Does that help you recall when it was that you spoke about selling your Leasepac stock?

A Well, there was one time it was in the summer, so that had to be 1970 then.

Q Tell us about that occasion then? What happened?

A I just merely called and inquired about selling it, and I was advised not to sell it.

Q By whom?

A By Mr. Berkson.

Q After the first occasion on which you talked about selling it,did you speak to Mr. BErkson again about selling it?

A Well, I don't really recall if I spoke to him another time, but I do recall calling the company on another occasion and getting no answer at all.

Q Was that after they had gone out of business?

A It must have been, because there was no answer at all.

Q Now, Mrs. Melling, I direct your attention to Government's Exhibit 11-A for identification, and specifically to the signature that purports to be yours on the back of that document. Is that your signature?

A No, it is not.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name to a stock transfer power like this?

A Never.

Q Did you ever authorize anyone at that company to use your stock in any way whatsoever?

A No.

MR. LOWE: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Do you have any idea who put your name on the back of that certificate?

A I have no idea.

MR. BRODKSY: That is all.

MR. ANOLIK: Are you introducing that?

MR. LOWE: I meant to.

I offer this.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

(Government's Exhibit 11-A is received in evidence.)

MR. LOWE: Thank you, Mr. Anolik, for reminding me.

THE COURT: Any questions?

MR. BRODSKY: I have already asked mine, your Honor.

MR. ANOLIK: Just one.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q You don't know Mr. Rind at all, do you?

A No.

THE COURT: Step down.

(Witness excused)

MR. LOWE: The Government calls Ethel Kaufman.

E T H E L K A U F M A N, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mrs. Kaufman, back in 1970 and the beginning of 1971, did you have a brokerage account at the brokerage firm of Packer, Wilbur & Company?

A Yes, I did.

Q And did you purchase some stock in a company known as Leasepac Corporation through Packer, Wilbur & Company?

A That's right.

Q Was that 100 shares?

A Yes.

Q Did you ever receive that stock?

A No.

Q Did you ever receive any money from Packer, Wilbur & Company for that stock?

A No, I didn't.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use that stock in any way?

A No, I did not.

Q Mrs. Kaufman, directing your attention to Government's Exhibit 8-A for identification, and on the back thereof the signature purporting to be your signature, is that in fact your signature?

A No, it isn't.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name to a document such as this?

A No.

MR. LOWE: The Government officers Exhibit 8-A in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

* * * (Government's Exhibit 8-A is received in evidence.)

MR. LOWE: No further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q You don't know a man by the name of Robert Berkson, do you?

A No, I don't.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Do you know Maurice Rind?

A No, I don't.

THE COURT: You may step down.

(Witness excused)

MR. LOWE: The Government calls Anita Zaztsky.

(Continued on next page)

A N I T A Z A T Z K I N, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Miss Zatzkin, back in 1970 and 1971 did you have a brokerage account in Packer, Wilbur & Company?

A Yes, I did.

Q And did there come a time when you purchased 100 shares of Leasepac Corporation stock through Packer, Wilbur & Company?

A Yes, I did.

Q And after you made that purchase did you ever receive the stock?

A No.

Q Did you ever receive any money for the stock from Packer, Wilbur & Company?

A No.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use your stock in any way?

A No.

Q Directing your attentention to Government's Exhibit 11B for Identification, and specifically to the signature on the back thereof that purports to be your

signature, is that in fact, your signature?

A No.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name to a document such as this?

A No.

MR. LOWE: The government offers 11B in evidence.

MR. BRODSKY: No objection.

MR.ANOLIK: No objection.

xx (Government's Exhibit 11B for Identification received in Evidence.)

MR. LOWE: No further questions.

MR. BRODSKY: I have no questions.

MR. ANOLIK: No questions.

BY THE COURT:

Q Miss Zatzkin, did you get a confirmation of this sale?

A No.

Q How did you deal with this? Did you go there specially --

A No, never -- oh, did I get a confirmation of the sale?

Q Yes.

A Absolutely.

Q That's all I asked you.

slds 3 Zatzkin -

A I'm sorry.

Q How did you get it? In what form did you get it?

A It probably was a slip --

Q Well, did it come by airplane, a foot runner, steamboat, what?

A By mail.

Q By mail?

A Yes.

Q Did you send a check when you did this?

A Yes.

Q How did you get the check there?

A By mail.

THE COURT: All right, thank you.

MR. ANOLIK: No questions.

(Witness excused.)

MR. LOWE: The government calls Elmer Twente.

MR. ANOLIK: Your Honor, may we approach the bench?

THE COURT: Yes.

(At the side bar.)

MR. ANOLIK: My client tells me he has to go to the bathroom.

(In open court.)

THE COURT: Five-minute recess.

slds 4 Twenty - direct

Please don't discuss the case among yourselves or with anybody else.

(Recess)

E L M E R T W E N T E, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q What is your profession?

A I am a physician.

Q Dr. Twente, back in 1970 or 1971 did you have an account at the brokerage firm of Packer, Wilbur & Company?

A Yes, I did.

Q And did there come a time when you purchased 100 shares of Leasepac Corporation stock through Packer, Wilbur & Company?

A Yes, sir.

Q Did you ever receive that stock from Packer, Wilbur & Company?

A No.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use that sotck in any way?

A No.

Q Directing your attention to Government's

slds 5 Twente - direct

Exhibit 11C for Identification, and directing your attention to the signature on the back thereof that purports to be yours, is that actually your signatire?

A No, it is not.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name to a stock transfer power such as this?

A No.

Q Did you ever receive any money from Packer, Wilbur & Company for your Leasepac stock?

A No.

MR. LOWE: The government offers 11C in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

(Government's Exhibit 11C for Identification received in Evidence.)

MR. LOWE: I have no further questions.

MR. BRODSKY: No questions.

MR. ANOLIK: No questions.

THE COURT: You may step down.

(Witness excused)

MR. LOWE: The government calls Richard Schreiber

slds 6

RICHARD SCHREIBER, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Schreiber, directing your attention to the year 1970, what was your business at that time?

A I was a securities dealer.

Q What was the name of the firm you were associated with?

A What part of 1970? I was with two firms in 1970.

Q August, September, October, November and December

A Schreiber, Bosse & Company.

Q And where is that located?

A In Cleveland, Ohio.

Q And were you the Schreiber of the Schreiber, Bosse?

A Yes, sir.

Q Among the business done by Schreiber, Bosse, Mr. Schreiber, did that firm act as a market maker in the stock of the Leasepac Corporation?

A Yes, sir.

Q From time to time in the course of that specific

slds 7 Schreiber - direct

aspect of your business did you do business a brokerage firm known as Packer, Wilbur & Company in New York?

A Yes.

Q And did you, from time to time, buy the stock of Leasepac Corporation from Packer, Wilbur & Company?

A Yes.

Q Were you personally involved in these transactions as a trader for your firm?

A I could have been. We had a trader but I could have executed trades.

Q With whom did you personally deal in connection with these Leasepac transactions at Packer, Wilbur?

A Normally whoever answered the trading line. I think they had a special number for trading.

Q Was there any person with whom you specifically dealt with from time to time?

A Well, there are a number of people, sir. I don't even remember all the names, but Maurice Rind, Peter, Tony, whoever answered the telephone.

Q Did you ever deal specifically with an individual by the name of Maurice Rind?

A Yes.

Q Do you know Mr. Maurice Rind?

A Yes, sir.

Q Do you see him here in the courtroom?

A Yes.

Q Did you, from time to time, deal with Maurice Rind in connection with purchasing Leasepac stock from Packer, Wilbur & Company?

A I don't remember specific trades, but I'm sure I did.

Q Do you know Mr. Robert Berkson?

A Yes.

Q Do you see him in the courtroom?

A Yes, sir.

MR. BRODSKY: Stand up.

(Defendant Berkson stands.)

Q Is he the gentleman who just stood up?

A Yes.

Q Did you, from time to time, deal with Mr. Robert Berkson in connection with the purchase of Leasepac Corporation stock for Packiner, Wilbur & Company?

A I don't recall having -- I may have, but I don't recall.

MR. LOWE: I have no further questions.

MR. BRODSKY: I have no questions.

MR. ANOLIK: No questions.

THE COURT: You may step down --

slds 9 Schreiber -

Just a minute, I would like to ask you some questions.

THE WITNESS: Should I sit down?

THE COURT: Yes, please sit down.

BY THE COURT:

Q In these transactions you had with Packer, Wilbur, what was the method of communicating with them when you transferred or confirmed sales or had any dealings with them which involve the documents?

A I don't know --

Q Mail, airplane, foot runner, or how did you get papers back and forth?

A We were in Cleveland and they were in New York. When you say, how did you communicate, are you talking about confirmations that were mailed or certificates, or what?

Q That's one of the things I was talking about.

A I presume it was mailed to us or vice versa.

Q No presumption. Don't you know what happened? You were there.

A I didn't handle that part of it. Normally you mail a confirmation.

Q Look, we are not talking about what you normally do. There are people here whose liberty is at stake here, and the government has an interest in this case too, and we

slds 10 Schreiber -

can't go on presumptions, and if you don't know you simply say you don't know.

A In the normal course of events it was mailed. I can't --

Q All right, in your office did you have people that were secretaries?

A Yes.

Q Did you have people that typed letters?

A Yes, sir.

Q Did you have people that had stamps?

A We use the stamping maching, yes.

Q All right, a stamp machine.

Now, are you able to say now, reflecting back, to the best of your recollection, whether or not those facilities were used?

A Normally, at any trade, you would mail a confirmation.

B2 Q What else? What other documents would pass between you and Packer, Wilbur? Any other documents?

A Well, after, on the settlement date, or, normally around the settlement date, andif we were a purchaser, we would pay for the securities and they would be delivered to our bank.

Q How would you pay it?

slds 11 Schreiber -

A By check.

Q And how would the check be sent?

A It was usually delivered to our bank; the securities would be delivered to our bank.

Q And the check was delivered to the bank?

A Yes.

Q To be forwarded to Packer, Wilbur & Company, New York?

A I believe -- I am not really certain --

Q Well, if you don't know then I'm not going to ask you any more questions. If you are just guessing at these things it's not good.

A Well, you see there are different ways --

Q All right, but can you tell me any of the ways that you know of yourself that you are willing to swear to? That's what I'm trying to find out.

A No, because I don't know of specific trades.

THE COURT: All right, then forget about it.

Do you have any documents that might refresh your recollection in this area?

MR. LOWE: I believe so, your Honor.

THE COURT: Well, hand it to him and let him look at it and see if he can remember in a specific case what happened.

slds 12 Schreiber -

THE WITNESS: I would not have personally received them anyway, so if you're asking me --

THE COURT: Well, thanks for coming from Ohio. We have enjoyed your company.

You're excused.

THE WITNESS: I wish that only paid my expenses.

THE COURT: Well, I wish only that you would have known something that you could testify to as a quid pro quo.

THE WITNESS: You invited me, sir.

THE COURT: I didn't invite you at all.

(Witness excused.)

MR. LOWE: The government calls Mr. Jerome Harris

J E R O M E H A R R I S, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q What is your profession?

A I am a physician.

Q Dr. Harris, back in 1970 and 1971 did you have a brokerage account at the firm of Packer, Wilbur & Company?

A Yes.

slds 13 Harris - direct

Q And, Doctor, who is Susanne Harris?

A That is my mother.

Q Did there come a time when you and your mother purchased 100 shares of Leasepac Corporation stock through Packer, Wilbur & Company?

A Yes.

Q Did you ever receive the certificate for that stock?

A No.

Q Did you ever receive any money from Packer, Wilbur & Company for that stock?

A No.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use your stock in any way?

A No.

Q Dr. Harris, directing your attention to Government's Exhibit 9 for Identification, I would ask you to look at the signatures on the back thereof that purport to be yours and your mother's and tell us whether those are actually the signatures of yourself and your mother?

A No, they are not.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name or your mother's name to a document such as this, Government's Exhibit 9?

A No, I did not.

MR.LOWE: The government offers Exhibit 9 in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

xx (Government's Exhibit 9 for Identification received in Evidence.)

MR. LOWE: No further questions.

MR. BRODSKY: Just a minute.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Do you know a man by the name of Robert Berkson?

A No, I do not.

BY MR. ANOLIK:

Q Do you know Maurice Rind?

A Who?

Q Maurice Rind.

A No.

MR. ANOLIK: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR.LOWE: The government calls Joseph Friedman.

slds 15

JOSEPH FRIEDMAN, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Friedman, back in 1970 and 1971 did you have a brokerage account at Packer, Wilbur & Company?

A I did.

Q Did there come a time when you purchased 200 shares of common stock of Leasepac Corporation through Packer, Wilbur & Company?

A That is true.

Q Did you ever receive the stock certificate for that stock?

A No, I did not.

Q Did you ever receive any money from Packer, Wilbur & Company for that stock?

A I did not.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use that stock in any way?

A No, sir.

Q Directing your attention to Government's Exhibit 6C in Evidence and specifically to the signature on the back thereof that purports to be the signature of

slds 16 Friedman - direct

Joseph Friedman, is that your signature?

A No, it is not.

MR. LOWE: I have no further questions.

MR. BRODSKY: No questions.

MR. ANOLIK: No questions.

THE COURT: You may step down.

(Witness excused.)

MR. LOWE: The government calls Maurice Schwach.

M A U R I C E S C H W A C H, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Schwach, back in 1970 and 1971 did you have a brokerage account at Packer, Wilbur & Company?

A Yes, sir.

Q And did you purchase 100 shares of Leasepac Corporation stock through Packer, Wilbur & Company?

A Yes, sir.

Q Did you ever receive the stock certificate for that stock?

A No, sir.

Q Did you ever receive any money from Packer, Wilbur & Company for that stock?

slds 17 Friedman - direct/cross

A No, sir.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use that stock in any way?

A No, sir.

Q Directing your attention, Mr. Schwach, to Government's Exhibit 8 for Identification, and specifically to the signature on the back thereof that purports to be the signature of Maurice Schwach - is that actually your signature?

A No, sir.

MR. LOWE: The government offers Exhibit 8 in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

xx (Government's Exhibit 8 for Identification received in Evidence.)

MR. LOWE: No further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q You don't know Robert Berkson, do you?

A No, sir.

BY MR. ANOLIK:

Q You don't know Maurice Rind, do you?

A No, sir.

slds 18 Pilpel - direct

MR. ANOLIK: No questions.

THE COURT: You are excused.

(Witness excused.)

MR. LOWE: The government calls Jerome Pilpel.

J E R O M E P I L P E L, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Pilpel, by whom are you employed?

A The National Association of Securities Dealers.

Q In what capacity?

A I am currently associate director of our New York office.

Q And for how long have you been so employed?

A Twelve years.

Q What is the National Association of Securities Dealers?

A We are a regulatory agency.

Q What do you regulate?

A The over-the-counter market.

Q What is the over-the-counter market?

A The over-the-counter market refers to the securities that are not traded on an exchange but traded

between dealers.

Q Of what is the National Association of Securities Dealers comprised?

A Well, we have currently about 3000 members of our organization on a nationwide basis. It is comprised of securities brokers.

Q Directing your attention to the year 1970, was Packer, Wilbur & Company, Inc. a member of the National Association of Securities Dealers?

A Yes, they were.

Q Mr. Pilpel, directing your attention to Government's Exhibit 26 for Identification: Is that a copy of a record made and kept in the ordinary course of business of the National Association of Securities Dealers?

A Yes, sir, it is.

Q Is it the regular course of the business of the National Association of Securities Dealers to make and keep records such as that one is?

A It is.

Q And do those records reflect the results of an examination of the financial records of Packer, Wilbur & Company for the period of time to which they relate?

A It does.

Q By whom was that examination performed?

A A gentleman by the name of Alan Citron.

Q And who is or was he?

A He was an examiner employed in our New York office.

Q And the particular record of which Government's Exhibit 26 is a copy, is that a record based on information which Packer, Wilbur & Company is required to supply to the National Association of Securities Dealers as a condition of its membership therein?

A It is.

MR. LOWE: The government offers Exhibit 26 in evidence.

B3 MR. BRODSKY: Excuse me, may I ask a few questions on the voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BRODSKY:

Q Mr. Pilpel, do you have the underlying documents from which this was taken?

A I don't have them here, no.

Q Did you see Mr. Citron when he was doing this work?

A Not specifically.

Q How do you know he did it?

A He was the examiner assigned to this particular examination.

Q And you assume that he did this work?

A That is correct.

MR. BRODSKY: May I come up for a minute, your Honor?

THE COUPT: Yes.

(At the side bar.)

MR. BRODSKY: Judge, there are two reasons why I object to this document: Number one, I don't think it is properly qualified as a financial statement of Packer, Wilbur because we don't have the underlying records from which it was taken; we don't have the man in court who this man assumes did the work. and it is certainly not a record kept in the regular course of business within the meaning of the business record rule, as I understand it, because what they did here is, they took some documents which we don't have and they interpellated, or whatever they did, to transpose into what they say is a balance sheet of Packer, Wilbur.

The second ground of the objection is that I don't believe the balance sheet of Packer, Wilbur is relevant to anything that we are doing here. If it shows that they are out of ratio, which it may, I don't believe that is relevant, and not only is it irrelevant but it is also

prejudicial.

MR. ANOLIK: I join in the objection, your Honor.

THE COURT: This was only marked for identification.

MR.BRODSKY: So far.

THE COURT: At the former trial, wasn't it?

MR. LOWE: It was admitted in evidence at the last trial, Judge.

THE COURT: I do not have that, because that is what I was just looking for in my notes.

MR. BRODSKY: My recollection is that it was admitted. I have my transcript, and I could checkit in a minutes. My clear recollection is that you did let it in but I wasn't as eloquent last time, Judge, about this.

THE COURT: Well, I think all you are saying is that it has to do with the weight that the jury will give to it. I think it is admissible.

MR. BRODSKY: That's not what I am saying, Judge-

THE COURT: But, then, on the question of the ratio, there, again, that's like motive. I think it has some relevancy to motive

MR. BRODSKY: But you are back to my first point, which is a balance sheet taken from some records which we do not have in the courtroom.

slds 23 Pilpel - direct

THE COURT: All right, then we will direct him to bring the records in here and then you can look at them and satisfy yourself.

I will take it subject to that connection.

MR. LOWE: I believe I have copies of the underlying documents.

MR. BRODSKY: I'm sorry?

MR. LOWE: I believe I have copies of the underlying documents.

THE COURT: Show them to him.

MR. LOWE: I don't have them here in court.

THE COURT: Well, at this point if I do take it subject to connection it will not be read to the jury or shown to the jury until I am satisfied that you have had an opportunity to check whether or not this correctly reflects the financial position of the company at that time from the basic documents that would go to support it.

MR. BRODSKY: All right, I respectfully except.

THE COURT: Well, you still except on the other ground, the ratio?

MR. BRODSKY: I except on both grounds, Judge.

THE COURT: Well, if you are shown the underlying documents --

THE CLERK: It was not in evidence.

slds 24 Pilpel - direct

THE LAW CLERK: According to the clerk's records, it was not in evidence.

THE COURT: According to my records it was not received. I don't think it was offered last time. I think he just identified it and then you went on to ask what was the ratio, and he told you what the ratio was.

MR. BRODSKY: Then my recollection is clearly wrong.

MR.LOWE: I think we both thought it was in because I even used it in my summation and nobody said anything about it.

In any event, I am offering it now.

THE COURT: It is taken subject to the condition that you give him the back ground data on which these figures were received overnight, and then Monday morning we will see what we come up with after you look at it.

MR. BRODSKY: But I think this witness or some witness would have to say this is what he used. If you are going to give me some pieces of paper --

THE COURT: But he can identify them as the backup documents.

MR. LOWE: These are papers that they made up for their own records based on what they reviewed of the tecords they had available to them for the purposes of

slds 25 Pilpel - direct

maintaining the record they are required to maintain as to the net capital standing that every member of the NASD.

MR. BRODSKY: All I'm saying is that if you have a witness who is going to say all that, that is one thing, but if it is just --

THE COURT: Well, you can develop some of that through this witness, can't you? Develop that part of it, and then Monday morning you can show him the underlying documents, or overnight you can show them to him and then I will rule again after he looks at it.

MR. ANOLIK: Judge, you wanted to remind the jury about Monday morning?

THE COURT: Yes, I know.

MR.BRODKSY: I just want to make my position clear, which is that there has got to be some witness to say these are records of Packer, Wilbur --

MR. LOWE: No, they are not offered as records of Packer, Wilbur.

MR. BRODSKY: Let me finish, Mr. Lowe, please.

Maybe I am wrong, but this is my position: Some witness has to say, "These are the records of Packer, Wilbur, the financial statement. I took this -- and I know that of my own personal knowledge -- I took this financial statement and prepared from the financial statement this

Exhibit 26 for Identification."

I think that is the only way this comes in.

So that's my position.

MR. LOWE: When somebody makes a record based on what he is told or is reported to him by people who have an obligation to report that, that record is admissible in evidence as an official record.

MR. BRODSKY: I just disagree.

THE COURT: Well, in any event, we will have further discussion on this after you see the backup material, and it may satisfy you at that point. If it does not, we will take it up then.

As to the other basis, the fact that it shows a ratio which might indicate that the company was not doing well, or whatever the situation was, that I think is allowable on the same basis as motive is allowable, to show the bad condition of the company, although they admit the company was in bad straits; I mean, even in their argument to the jury and cross-examination of the witnesses it seems to come through that there is no question about the fact that the company was in bad straits.

MR. BRODSKY: I respectfully except.

THE COURT: But develop as much as you can and we will take it up Monday morning.

(In open court)

Q Mr. Pilpel, how does the person who prepares this record, Government Exhibit 26 for identification, go about preparing it?

A He prepares it from an answer statement, usually a trial balance, which are all the debits and credits relative to the firm's financial condition and supporting schedules attached to that.

A person categorizes all these debits and credits, as to assets, liabilities and capital.

Once he does that, he makes this arithmetical computation.

Q Where does he get the basic information to start with?

A From financial information supplied by the firm.

Q And under what --

THE COURT: Does he make any judgment at that time?

THE WITNESS: There would be a judgment question with respect to some of these items, yes.

THE COURT: For example?

THE WITNESS: And example would be with respect to marketability of certain securities, as to their price, whether or not there is a sufficient market for those securities, whether they can be sold, not sold; certain

kinds of receivables may or may not be allowable in the computation.

THE COURT: There is no T&R on these, like Internal Revenue?

THE WITNESS: No.

THE COURT: Where are those records now?

THE WITNESS: The records are in our office in our file.

THE COURT: Where is your office?

THE WITNESS: 77 Water Street.

THE COURT: With down here?

THE WITNESS: Yes.

THE COURT: All right, go ahead, Mr. Lowe.

BY MR. LOWE:

Q What is the source of the requirement that the brokerage firms supply to NASD the information that is necessary to complete the form that we are talking about?

MR. BRODSKY: I object to that.

MR. ANOLIK: I join in that.

THE COURT: I will take judicial notice of any rule or regulation.

Is there a rule or regulation?

THE WITNESS: Yes.

THE COURT: I will take judicial notice of it.

You can furnish it to me.

MR. ANOLIK: Most respectfully, this is a voluntary organization, your Honor. I don't think that comes within the purview of judicial notice.

BY MR. LOWE:

Q In connection with it being a voluntary organization, let me ask you this, Mr. Pilpel: What is the regulation of the NASD with respect to dealing with any firm that is not a member?

MR. BRODSKY: I object to it.

THE COURT: I will take it subject to connection.

A Our jurisdiction only pertains to members of ours.

Q What are the rules governing your members with respect to their dealings with non-members?

MR. BRODSKY: I object to that.

MR. ANOLIK: I join.

THE COURT: In an attempt to find out whether I can take judicial notice of it, I will take the testimony.

Overruled.

A A member of the NASD can only deal with a non-member of the NASD if that non-member were a customer other than a broker-dealer.

Q So that in order to deal with another broker-dealer as a broker-dealer, you must beong to the association?

A Except that if you have two non-members they can deal with each other.

Q You said you had some 3,000-odd members across the country.

A That is correct.

Q Is there any law that you know of that governs the NSAD?

MR. BRODSKY: I object to that.

THE COURT: If he knows, I will allow him to answer.

A The NASD is a regulatory agency and is under the jurisdiction of the SEC.

MR. ANOLIK: Objection, your Honor. I respectfully disagree with that.

THE COURT: Well, you can produce evidence otherwise and then I will make a finding of law on this.

This is a law question at this point, whether I allow this or not, whether I take judicial notice or not.

It doesn't concern your function, ladies and gentlemen.

I will allow him to testify in this area.

MR. LOWE: At this point I don't have any further questions, and I will produce the necessary rules, et cetera, for your Honor's attention.

I submit that -- I have no further questions of the witness subject to recalling him after I give Mr. Brodsky the other documents, if that is necessary.

THE COURT: You want to save your cross-examination until when he is recalled?

MR. BRODSKY: Yes, I would like to do that, Judge.

THE COURT: All right, you are excused at this point.

(Witness excused)

MR. LOWE: The Government calls Mr. Abe Katz.

A B R A H A M K A T Z, called as a witness on behalf of the Government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Katz, during 1970 did you have a business relationship with the brokerage firm by the name of Packer, Wilbur & Company?

A Yes.

Q And in essence, what was the nature of that

business relationship?

A I arranged loans for them.

Q Specifically directing your attention to the month of September of 1970 and the date September 2, 1970, did you receive from them on that day 5,000 shares of stock of a company known as Robotguard, Inc.?

I will direct your attention to Government's Exhibit 7 in evidence.

A Yes, I did receive this from them.

Q And what was the purpose of your receiving that stock?

A This was inpartial payment of a loan that I had arranged for them.

Q What did you do with the stock when you got it?

A Took it over to the Atlantic Bank of New York.

Q For what purpose?

A To repay part of the loan.

Q Do you recall specifically now who gave you the stock, what individual that is, that gave you the stock on September 2, 1970?

A Bill Hyman.

Q Who, if anyone, was present at that time?

A There was an office full of people, but it was Bill Hyman that I had the transaction with.

Q Well, do you recall any other people who were present at the time Mr. Hyman gave you the stock?

A No, I don't think anyone in that respect.

MR. LOWE: I have no further questions.

MR. ANOLIK: Just one second.

(Pause)

MR. ANOLIK: No questions, your Honor.

THE COURT: You may step down.

(Witness excused)

MR. LOWE: The Government calls Ephram Bloch.

E P H R A M B L O C H, called as a witness on behalf of the Government, after being first duly sworn, was examined and testified as follows:

THE COURT: Do you think you can get through with his testimony in fifteen minutes?

MR. LOWE: I don't know, Judge. I doubt it.

THE COURT: There is cross-examination, too. As I see my calendar here, this is a religious day for some people. As I see the sun sets at 7:14, there might be some people who might want to get home before that.

Since he has to come back anyhow because we can't finish with him today, maybe it would be getter to adjourn now and hear him all at one time.

We are sorry that you are inconvenienced this way, Mr. Bloch. You see, the Catholics have a 40-day Lent and, of course, Yom Kippur is condensed into one day. We can't condense your testimony into fifteen minutes, because I happen to be of the opposite faith.

THE WITNESS: Today happens to be Shavuoth.

THE COURT: That's the reason I want you to go home and get home before 7:41. That's exactly what I am talking about.

I am only apologizing to you for having to come down again. I appreciate the fact you do so.

We will recess at this time. Please do not talk about this case or form or express any opinion in this matter until it is submitted to you for your decision.

We will resume on Monday.

There is another case that is in this court that will go until about eleven o'clock or so, maybe a little later, so please don't come in until 11:15 on Monday morning. As soon as that other case is over, we will continue with this case.

(Adjourned to Monday, June 7, 1976, at 11:15 a.m.)

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296

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
James Gallentine (Resumed)	86	130	192	211
Sam Caplan	230	238		
Melvin Mayerson	242	245		
Jeffrey Goldman	250			
Rudolph Rado	251	253		
Eleanor Melling	254	258		
Ethel Kaufman	259	260		
Anita Zatzkin	262			
Elmer Twente	265			
Richard Schreiber	267			
Jerome Harris	273	275		
Joseph Friedman	276			
Maurice Schwach	277	278		
Jerome Pilpel	279	290		
Abraham Katz	292			
Ephram Bloch	294			

EXHIBIT INDEX

Government	Identification	In Evidence
27,27-A		94
41		129
43	207	209
22		244
21		251
6-D		253
11-A		258
11-B		263
11-C		266
8		278

The next page of transcript is 298

UNITED STATES OF AMERICA

vs. 75 Cr. 608

ROBERT BERKSON and
MAURICE RIND.

New York, June 7, 1976;
11.30 o'clock a.m.

(Trial resumed.)

- -

(In the courtroom; jury present.)

E P H R A I M B L O C H , resumed.

DIRECT EXAMINATION (Continued)

BY MR. LOWE:

Q Mr. Bloch, I would like to remind you that on Friday afternoon you were sworn, and that oath still applies as you sit up there and testify this morning.

Mr. Bloch, back in the year 1970 did you have a brokerage account at the brokerage firm of Packer, Wilbur & Company?

A Yes, sir.

Q Now, apart from being a customer of that firm did you have any other business relationship with Packer, Wilbur & Company in 1970?

A Yes, sir.

Q Would you tell us what that business relation-

ship was?

A Well, Packer, Wilbur had done a rights offering for our company.

Q What company was that?

A I don't remember whether the name was Perfect Fit or PRF at that time.

Q And what is a rights offering?

A Well, we had a burglar alarm system, and a rights offering was made to the Perfect Fit holders that for every two shares of Perfect Fit they had they could buy one share of Robotguard.

Q In other words, they were offered the right to buy a share of Robotguard stock, is that correct?

A That's correct.

I was going along with my dealings with Packer, Wilbur, my personal dealings.

In the summer of 1970 I had sold some of my Robotguard stock, which may have been changed to the name of Site-Pak at that time, I don't recall, and the principals of Packer, Wilbur objected to --

MR. BRODSKY: I object, your Honor.

Q Mr. Bloch, before we get into that, and apart from your personal dealings in this sale of stock that you just started to talk about, was there any other

other business between yourself or any company in which you had an interest in Packer, Wilbur going on in the summer of 1970?

A Yes. We were looking for an underwriting on a split-off of the burglar alarm system. We had a patent on a telephone, and we started a company called Tele Communications, and we would discuss with Packer, Wilbur the underwriting of that company.

Q All right, could you tell the jury what is an underwriting?

A Well, an underwriting is when a company sells a portion of its ownership to the public.

Q Through?

A Through a brokerage company.

Q And in the summer of 1970 you were discussing with the people at Packer, Wilbur & Company their doing an underwriting for this burglar alarm system?

A That's correct.

Q Now, you started to tell us that there came a time when you sold some Robotguard stock. Approximately when was it that you sold stock in the company known as Robotguard?

A In December of 1970.

Q After the sale of the stock did you hear from

anyone at Packer, Wilbur & Company about the fact that you had sold the stock?

A Yes, I did.

Q Specifically from whom did you hear?

A I heard specifically from Bill Hyman.

Q About when did that take place?

A It took place with me on a Monday morning in July or August.

Q Of 1970?

A Of 1970, yes.

Q Was that in person or on the telephone?

A That was on the telephone?

Q Will you tell us the conversation?

A Well, he said that I sold some stock and they are very unhappy about that, because not that I am not entitled to sell the stock; I bought the stock; I paid for it; but they felt that I was damaging the market on the stock.

Q was there anything else said on that occasion?

A Well, Bill said that his two partners were really in flames about this, when in particular, Mr. Rind.

Q Was there any further conversation at that time?

A Oh, yes.

They wanted possession of my shares, and also Mr. David Lipschutz' shares, as he had sold some stock also.

So we turned over our shares to them.

Q Was there anything said about why you should turn over your shares to Packer, Wilbur?

A That was to assure the fact that we would not continue to sell the shares. I have 20-20 hindsight --

MR. BRODSKY: I object to it.

THE COURT: Yes.

Q Mr. Bloch, please confine yourself --

THE COURT: You don't object to his having 20-20 hindsight?

MR. BRODSKY: No.

THE COURT: His mental operation?

MR. BRODSKY: No.

Q Mr. Bloch, please confine yourself to just answering the questions that are asked?

A Yes, sir.

Q Did you deliver some Robotguard stock to Packer, Wilbur & Company?

A Yes, sir.

Q Directing your attention to Government's Exhibit

4-B in evidence, is that a receipt from Packer, Wilbur for the stock you delivered to them?

A Yes, sir.

Q Mr. Bloch, that receipt is dated August 20, 1970. Is that the approximate date on which you delivered the stock to Packer, Wilbur?

A Yes, sir.

Q Now, Mr. Bloch, when you delivered that stock to Packer, Wilbur & Company did you authorize them to use that stock in any way?

A No, sir.

Q Did you authorize anyone at Packer, Wilbur & Company to sign any stock transfer powers with your name?

A No, sir.

Q Mr. Bloch, I would like to direct your attention to Government's Exhibits 1-B in evidence, 1-C, 4-C, 7-C and 11.

I would like you to look at the signatures on the stock transfer powers attached to those certificates and tell the jury whether or not those are your signatures?

A No, not one of these are mine.

Q Now, Mr. Bloch, did there come a time when you had a conversation with Wilbur Human regarding the fact that some of the Robotguard stock that you had delivered

to Packer, Wilbur had been transferred out of your name?

MR. BRODSKY: Before we get an answer to that question can we come up for a minute, your Honor?

THE COURT: yes.

(At the side bar.)

MR. BLOCH: I am just anticipating a problem, so we don't get an answer before I have an opportunity to say something about it.

I don't think it is the answer to this question, but from the 3500 material, from the last trial, this witness has said not in the last trial but in some 3500 material that there did come a point when he complained to Hyman about the sale of the stock, and Hyman, in effect, confessed to him that he was using the stock in an unauthorized way, and he then goes on to say that Hyman says that neither Rind nor Berkson want to do anything about it despite the fact that they understand that this was an unauthorized way to do it.

Now, it may be that all of this is academic, and if I may ask Mr. Lowe if he intends to elicit that conversation, because if he does not, then this is all academic, but I do have to anticipate.

MR. LOWE: I suggest we do it the same way that we did it last time. After this conversation, the one

in which Hyman says there must have been a mistake or something, then the second time comes and he says that Hyman tells him that they had sold the stock. Then I will ask him, like I did the last time, whether or not after that he and Mr. Hyman reached an agreement as to what was to be done about the situation, and that will avoid the problem we are talking about.

MR. BRODSKY: No problem. Okay.

Thank you.

(End of side bar discussion.)

(Continued on next page.)

erkson
6, T--2am

rm ja 1 Bloch - direct

(In open court)

BY MR. LOWE:

Q Did there come a time when you had a conversation with Mr. Hyman about the fact that the Robotguard stock -- some of the Robotguard stock you delivered to Packer, Wilbur had been transferred out of your name?

A Yes, sir.

Q Approximately when did that conversation take place?

A December of 1970..

Q Where did it take place?

A It took place on the telephone.

Q What was that conversation?

A I told him that I had a telephone call from Bob DeFloria, who was then the head of Site-Pak, and the stock book, and he called me up and told me I had sold 5,000 or 10,000 shares, and I told him that I had not.

I called Hyman about it. At that time he was on the floor of the National Exchange and said he would check it out as soon as he got back to his office.

He later told me it was a mistake, that it was just a bookkeeping error.

Q Did you have occasion thereafter to speak to Mr. Hyman again on the same subject?

A Yes. I received another call from Mr. DeFlorio telling me another 5,000 or 10,000 shares had been moved, and I called Bill Hyman on the phone, and this time we had a meeting in my office about it.

Q Where was that?

A At 330 Fifth Avenue.

Q Who was present at the meeting?

A Bill Hyman and myself.

Q What was the conversation at the meeting with Mr. Hyman regarding what had happened to your stock?

A Well, he said it turned out it wasn't a mistake and that they had sold my shares.

Q Mr. Bloch, thereafter did there come a time when you reached an agreement with Mr. Hyman as to what was to be done to resolve this problem?

A Well, Bill started negotiating with me about the price of the shares. There were 27,000 shares involved that I paid a dollar and a quarter for --

Q A dollar and a quarter per share?

A Yes, based on the market at the time, they had sold them for about three dollars, or slightly more, per share. He started negotiating the price and perhaps --

Q Did there come a time when you actually came to an agreement as to the amount of money to be paid to you?

A Yes. Going down the line, you know, week by week, with the negotiating, he told me the best he could do was a dollar a share.

Q Did you ever receive the dollar per share that Mr. Hyman offered you in settlement?

A No.

Q Did you ever have occasion to discuss that fact with anyone at Packer, Wilbur other than Mr. Hyman?

MR. BRODSKY: I object to it, your Honor.

THE COURT: Overruled.

A I had signals coming to me that --

Q Did you ever --

A Yes, I did.

Q With whom?

A Mr. Rind.

Q Was that in person or on the telephone?

A On the telephone.

Q Approximately when was that conversation?

A Oh, based on the schedule, I guess in February.

Q Of 1971?

A Of 1971.

Q What was t conversation, what did you say to Mr. Rind and what did he say to you?

MR. BRODSKY: I object, your Honor.

THE COURT: Overruled.

A Well, it came from Bill Hyman telling me that Mr. Rind didn't --

Q What did you say to Mr. Rind, what did he say to you, just that?

A I said to Mr. Rind, a conversation about the dollar a share, that I was unhappy with it, but that was what was settled on, a dollar a share, and that Mr. Rind was backing off the agreement Bill made with me.

Mr. Rind told me to go fly a kite, or something like that, that I wasn't going to get anything.

MR. LOWE: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Block, what was your occupation in this period of time, in 1970, 1969?

A My occupation?

Q At that time, yes.

A I am associated with a company --

Q At that time?

A Yes.

Q What company was that?

A Called Perfect Fit or PRF.

Q What was your position in the company at the

time?

A President.

Q What did Perfect Fit do?

A Perfect Fit manufactured home furnishings, we are in the background music business. We had this company with the burglar alarms.

Q Was Perfect Fit at the time a public company?

A Yes.

Q In the sense that its shares were traded in the over-the-counter market?

A Yes.

Q Were you at the time the chief executive officer of Perfect Fit?

A Yes.

Q And a major stockholder in Perfect Fit?

A Yes.

Q What percentage of thecompany did you own at the time, approximately?

A I think about 45 percent.

MR. BRODSKY: No further questions.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Mr. Rind had a rather bad temper, did he not?

A Yes, excitable.

Q And as a matter of fact, he refused to pay you anything or to indicate that he would pay you anything for the stock?

A That's correct.

Q Isn't it a fact also that your dealings primarily were with Mr. Hyman in that firm?

A Yes.

Q Robotguard was traded in the National Exchange, was it not?

A Yes.

Q You testified previously in the grand jury in this case?

A Yes.

Q And at that time you were asked certain questions and you made certain answers; isn't that so?

A Yes.

Q At that time is it not a fact that you indicated that virtually all your dealings were with Mr. Hyman?

A Over a period of years I would say that 85 percent of my dealings were with Mr. Hyman.

MR. ANOLIK: No further questions.

MR. LOWE: Nothing further.

(Witness excused)

MR. LOWE: The Government calls David Lipschutz.

D A V I D L I P S C H U T Z, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Lipschutz, directing your attention to the year 1970, did you have a brokerage account at the firm of Packer, Wilbur Company in that year?

A Yes.

Q During that year were you associated in business with a Mr. Ephraim Bloch?

A Yes.

Q During the year 1970 did there come a time when you caused some stock in the company known as Roboguard, which was owned by you, to be delivered to Packer, Wilbur & Company?

A Yes.

Q How did you physically accomplish that there are particular activity?

A The stock was in a brokerage firm by the name of Dean Whitter & Company, and at Mr. Bloch's request I had Dean Whitter deliver my stock to Packer, Wilbur.

Q Was it Dean Whitter or was it Goodbody & Company?

A It could have been Goodbody.

Q Do you recall how many shares you had delivered to Packer, Wilbur & Company?

A I believe 10,500 -- somewhere between eleven and thirteen thousand, and I am not quite sure of the exact amount, but 10,500 sticks in my mind.

MR. LOWE: Could I have this document marked Government's Exhibit 5-F for identification.

(Government's Exhibit 5-F was marked for identification.)

Q Directing your attention to Government's Exhibit 5-B in evidence and 5-F for identification, are those the receipts for the delivery of Robotguard stock to Packer, Wilbur for your account?

A Yes.

MR. LOWE: The Government offers Exhibit 5-G in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

(Government's Exhibit 5-F for identification was received in evidence.)

Q When you had that stock delivered to Packer, Wilbur, did you authorize Packer, Wilbur or anyone at Packer, Wilbur to use that stock in any way?

A No.

Q The stock that you had delivered to Packer, Wilbur, was that in your name or in the name of a brokerage firm?

A It was in the name of the brokerage firm.

Q Directing your attention to Government's Exhibit 5-C for identification, would you tell us what that is?

A Yes. I called Mr. Hyman.

Q Well, what is the document?

A It is a letter from me to Mr. Hyman at Packer, Wilbur.

MR. LOWE: The Government offers Exhibit 5-C in evidence.

MR. BRODSKY: I have no objection, your Honor.

MR. ANOLIK: No objection.

(Government's Exhibit 5-C was received in evidence.)

Q This letter is letter is dated December 16, 1970, and is addressed to Mr. William Hyman at Packer, Wilbur:

"Dear Bill: Confirming our telephone conversation and as of today the 10,500 shares of Robotguard stock held by you for my account are to be registered in the

name of David Lipschutz. Kindest regards."

Then at the bottom of this piece of paper is some handwriting bearing the date 1/8/71.

Did you put that handwriting on there?

A Yes, I did.

Q Did you have a conversation with Mr. Hyman on that date about the subject of this letter?

A Yes, I did.

Q Was that on the phone?

A Yes, it was.

Q Would you tell us what that conversation was?

A I had only received confirmation for a portion of the 10,500 shares of stock and I requested an acknowledgement that they had received the remainder of the stock.

I checked with the brokerage firm and they advised me they had sent it to them, and I believe their monthly statement indicated so.

I additionally requested Mr. Hyman on that date to please have the stock registered in my name, and he said he would.

Q Did there come a time thereafter when you requested that the stock certificates be delivered to you?

A Yes, and I believe that was several months later.

Q Did you do that orally?

A No, I believe I did that with a letter.

Q Showing you Government Exhibit 5-D for identification, is that a copy of the letter you are referring to?

A Yes.

MR. LOWE: The Government offers 5-D in evidence.

MR. ANOLIK: No objection.

MR. BRODSKY: I have no objection.

* * * (Government's Exhibit 5-D for identification was received in evidence.)

Q This letter is dated April 8, 1971, and is addressed to Packer, Wilbur & Company, attention Mr. Wilbur Hyman, regarding the 10,500 shares.

The second paragraph of the letter reads, "I have recently orally requested the delivery of certificates representing said 10,500 shares and haven't yet received the same. Please consider this a formal written request for the delivery to the undersigned of such certificates. Very truly yours, David Lipschutz."

With whom did you have the conversation in which you orally requested the delivery of the stock?

A I don't know the gentleman's name. I called

and asked for Mr. Hyman and he wasn't in, and I spoke with someone else and made the request via telephone and asked them if they would relay the message to Mr. Hyman, and they said they would.

I attempted to reach Mr. Hyman several times subsequently and was not successful, and, therefore, I wrote the letter.

Q How long before the letter, approximately, did you have this conversation in which you requested your stock to be delivered?

A Possibly six weeks, give or take a week.

Q Did anyone at Packer, Wilbur ever tell you that your stock had been disposed of in any way?

MR.BRODSKY: I object to it, your Honor.

THE COURT: I will allow it.

Overruled.

It is leading, but I will allow it.

THE WITNESS: I'm sorry, I didn't hear you, your Honor.

THE COURT: You may answer the question.

A No.

Q During the time that you were seeking the return to you of the stock certificates did anyone tell you that Packer, Wilbur had gone out of business?

MR. BRODSKY: I object, your Honor.

THE COURT: I will allow it.

Overruled.

A No.

MR. LOWE: I have no further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q What was your occupation in 1969 and 1970?

A I was president of Robotguard, Inc.

Q And chief executive officer?

Q Yes.

Q What percentage of the stock of Robotguard did you own in those years?

A Originally I held 25,000 shares.

Q Do you recall in the period of time that you have been testifying about what was the approximate price of Robotguard?

A I think it was approximately, at various times, between two and five dollars a share.

MR. BRODSKY: No further questions.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q At what price did you acquire the stock, do you know, offhand?

A If you give me a moment, I can determine this. Approximately $3.50 a share.

Q Did you sell any portion of it before you sent some to Mr. Hyman to sell?

A Yes.

Q How much did you sell?

A 14,500 shares.

Q At what price?

A At varying prices.

Q At a profit or a loss?

A I think at just about the break-even point. There may have been a slight profit or slight loss.

Q You didn't sell those 14,000 through Mr. Hyman, though?

A No, I did not.

Q You sold through someone else?

A Yes.

Q You dealt with Mr. Hyman, though, in this firm?

A Yes.

MR. ANOLIK: No further questions.

MR. LOWE: I have nothing further.

(Witness excused.)

MR. LOWE: The Government calls Allan Salovin.

r3 am 1 sls

2 A L L A N S A L O V I N , called as a witness by the
3 Government, being first duly sworn, testified as
4 follows:
5 DIRECT EXAMINATION
6 BY MR. LOWE:
7 Q Mr. Salovin, are you an attorney?
8 A Yes, I am.
9 Q And are you admitted to practice law in the State
10 of New York?
11 A Yes.
12 Q And how long have you been in practice as an
13 attorney?
14 A Approximately 20 years.
15 Q Mr. Salovin, directing your attention to the
16 summer of 1970, did you represent a man by the name of
17 Ephraim Bloch at that time?
18 A Yes, I did.
19 Q Did you also represent a gentleman by the name
20 of David Lipschutz?
21 A Yes.
22 Q Did you also represent any companies in which
23 they were involved?
24 A Yes, sir.
25 Q And could you tell us what companies he repre-

sented?

A There was a company called Robotguard, and there was also another called at that time I think either Perfect Fit Industries, or it later changed its name to PRF Corporation.

Q Now, as of the summer of 1970, Mr. Salovin, had you had occasion to have a professional relationship with a brokerage firm known as Packer, Wilbur & Company?

A Yes, sir, I did.

Q And would you tell us, in substance, what was that professional relationship?

A Well, in 1968 I represented Perfect Fit Industries, INc. in connection with a public offering that it made of its debentures, and Packer, Wilbur was the managing underwriter; and I think in March of 1969 I represented Robotguard which effected a public offering of its common stock, and Packer, Wilbur & Company was the managing underwriter on that occasion.

Q And did you know Mr. Wilbur Hyman?

A Yes.

Q And do you know Mr. Robert Berkson?

A Yes.

Q Do you see Mr. Berkson in the courtroom?

(Defendant Berkson stands.)

A Yes, that is Robert Berkson.

Q Is he the man who stood up?

A Yes.

Q Do you know Mr. Maurice Rind?

A Yes.

Q Do you see him in the courtroom?

A At the far end of the table, yes.

MR. LOWE: May the record reflect that the witness has identified the defendant Rind.

MR. ANOLIK: So conceded.

BY MR. LOWE:

Q Now, Mr. Salovin, you have practiced law in the securities area, have you not?

A Yes.

Q Would you tell us within the context of the securities industry what is the meaning of the term "a lawyer's opinion letter"?

A Well, under the Federal Securities laws stock may be restricted from transfer either by reason of the method in which it has been acquired or by reason of the owner's relationship to the issuer of those securities, or the company, and at times, in order to satisfy a transfer agent with whom restrictions have been placed against transfer, an attorney is required to render an opinion

to the transfer agent or to the company as to the reason why the restrictions that previously were on the shares by reason of either the way it was acquired or the relationship of the owner, are no longer applicable.

Q Did there come a time, Mr. Salovin, when you had occasion to write such an opinion letter with regard to some stock in a company known as Robotguard owned by Mr. Ephrain Bloch?

A Yes.

Q And approximately when did you have occasion to write that letter?

A It was either in July or August of 1970.

Q Now did there come a time when you had a conversation with Mr. Robert Berkson regarding the opinion you had issued with respect to Mr. Bloch's stock?

A I did have a conversation with Mr. Berkson. It was actually, I believe, prior to the time I formally issued the opinion.

Q When and where did the conversation with Mr. Berkson take place?

A Well, I had arrived home one evening, and just as I walked in the house or very shortly thereafter my wife told me that there was a phone call for me, and I picked up the phone --

Q Well, before we get into what happened when you picked up the phone, will you tell us about when this was?

A This was late July of 1970.

Q You picked up the phone, and what happened?

A There was a secretary at that time at Packer, Wilbur, a girl by the name of Pat -- I don't know what her last name was -- who I had met and talked to in the past, and she said that Bob Berkson wanted to speak to me; and then Bob Berkson got on the phone.

Q And what was the conversation that you had with Mr. Berkson at that time?

A He wanted to know if I knew if Ephraim Bloch and Dave Lipschutz were selling Robotguard stock.

And I said to him, why doesn't he check with them?

And he said he couldn't get hold of Ephraim Bloch and that's why he was asking me.

And I said I didn't know that they were selling stock, although I had advised both of them that if they wanted to they could sell their shares of Robotguard.

Q And what if anything did Mr. Berkson say when you told him that?

A Not too much. He just asked me -- I believe

he was the one who asked me, didn't it make a difference that they had an interest in this company, Tele Communications, which was going to be a spinoff of Robotguard, and because they were controlling persons there, shouldn't they also be restricted with regard to Robotguard, which was the company which was spinning off Tele Communications Corporation.

Q What did you say to that?

A I said no. It was two different companies, and their relationship to Tele Communications wouldn't affect their ability to sell Robotguard.

Q Now after the conversation with Mr. Berkson did you have a conversation with Mr. Rind about the same subject?

A Yes.

I finished the call with Bob Berkson, and within a few minutes this girl, Pat, was back on the phone again, called me and said that Maurice Rind wanted to speak to me.

And Maurice got on the phone at that point and started to yell at me that what right did they have to sell the stock, and what right did I have to give an opinion?

And I told him I wasn't going to discuss law

with him because I didn't think he was qualified to do so.

And then he got very angry and he said, "Those fucks are killing the market," and that was just about the end of the conversation.

Q Mr. Salovin, directing your attention to page 530 of the transcript of your testimony on a prior occasion, I ask you to read from about line 11 on down to the end of the page, just quietly to yourself, and let us know when you finish?

A Yes?

Q Having read that, does that refresh your recollection as to the person with whom you discussed the subject of the relationship of Bloch and Lipschutz to this Tele Communications?

A It does.

As I indicated, I wasn't sure if I had spoken to either Bob Berkson or Maurice Rind about that relationship. I know I had discussed it with one of the two in the telephone call.

Q Do you now know and recall with which one of them you had that specific conversation?

A I now recollect that it was with Maurice Rind.

MR. LOWE: I have no further questions.

CROSS EXAMINATION

BY MR. BRODSKY:

Q Mr. Salovin, you had testified two minutes ago about a transfer agent. Do you recall that?

A Yes.

Q Will you tell the Court and jury what the function is of a transfer agent, please?

A Well, normally one of the functions -- a transfer agent has several functions:

One is to make sure that a company never issues more stock than it has authorized.

No. 2, to make sure that if there are any transfers of stock, t . the transfer documents are properly signed; and

No. 3, in the context of what I testifed, where there are restrictions against transfer, to make sure that transfers are not made unless an opinion lette of counsel is given as to those particular restrictions.

Q Now, Mr. Salovin, if a person owns stock in his name, and let's assume that stock happens to be with some third party, and the owner of the stock wants to be sure that the stock is not transferred to somebody else's name, would one way to accomplish that result be to write a letter to the transfer agent and tell the transfer agent

not to transfer any stock in his name?

A I --

Q Did you follow what I said?

A No.

Q All right, let me do it again:

Let's assume that I, for example, own stock which is in my own name, but the stock happens to be with a friend of mine, in his possession. Now I want to be sure that that stock is not transferred to anybody else's name except mine.

Now, would one way to accomplish that be to send a letter to the transfer agent to tell the transfer agent not totransfer that stock in my name?

A The only time I would think of sending a letter like that, if somehow the stock was endorsed or there was a power that was endorsed, so that when the stock certificate was delivered to a third party in your name, that party would have the -- not the legal right but at least have the power to cause the transfer by delivering in the stock with a signature endorsed on those certificates; but if there was no endorsement on the certificate, there would be no need to advise the transfer agent because they couldn't legally effect the transfer without a signature, you know, an endorsement.

Q But if I did advise the transfer agent, no matter what other signatures were on the certificate, the transfer agent wouldn't transfer that certificate unless he got some further clarification, is that correct?

A The transfer agent might literally run for cover at that point because there would be a question of a conflict, although, normally, the person who walks in with a certificate, with the signature guaranteed, the burden is on somebody else to prove that there is no authority in the holder not to secure a transfer.

Q But the transfer agent, you say, would run for cover, meaning that it would seek further guidance --

A It would get some further clarification of what's going on.

Q Thank you.

Now, Mr. Salovin, in your testimony today you had talked about that you had a conversation about this Tele Communications stock, do you recall?

A Yes.

Q Now your testimony on direct examination before Mr. Lowe showed you this transcript from a prior proceeding was mistaken as to the name of the person that you had that conversation with; isn't that correct?

A That's correct.

Q And the fact of the matter is, Mr. Salovin, that when you did talk to Mr. Berkson when he first called you, and you said that you had given an opinion, as you had testified, all he said was okay, and that was the end of the conversation, isn't that correct?

A That's right.

MR. BRODSKY: Thank you.

No further questions.

CROSS EXAMINATION

BY MR. ANOLIK:

Q Mr. Salovin, you were the representative, the attorney representing the company Robotguard, is that correct?

A At that time I was doing limited work for Robotguard.

Q You also represented the president?

A Well, Ephraim Bloch was not the president. In June of 1970 there was a change in control of Robotguard, the control going out to California to a group of people out there.

Q Do you know what Mr. Lipschutz' position was?

A Mr. Lipschutz previously had been president of Robotguard up to early June of 1970.

Q Do you know if he acquired any shares on the original issue?

A No, I think -- Dave Lipschutz acquired shares subsequent to the original issue.

Q When did Robotguard come into existence, do you know?

A I would say that actually Robotguard was a continuation of a company that was organized, probably, in the early '60s by the name of Reminder; and then there was a bankruptcy proceeding in which Perfect Fit obtained control of the funding, you know, the reorganization.

Q I don't want to go into that historic background unless you feel you want to.

A No.

Q But Robotguard itself was a company that came into existence when?

A About 1967 or 1968 it was organized.

Q When did it go public? That's what I am trying to find out.

A In 1969. March of 1969.

Q When did you write that opinion letter that he principals could sell their shares?

A I had been questioned about it in late June or early July, and I advised Ephraim Bloch, who had been a

principal, that he could sell his shares, and I think I actually reached an opinion in August at the time that the shares were presented for transfer. He had sold some shares.

Q 1970 you are talking about?

A That's right, the sale in 1970.

Q So, in other words, in perhaps less than a year the insiders were already looking to sell out their shares in Robotguard, is that right?

A I don't know how to answer that question.

MR. LOWE: I object.

THE COURT: He says he doesn't know how to answer it. He can't answer that question.

BY MR. ANOLIK:

Q You are experienced in the stock market, are you not?

A Yes.

Q Do you know of any other situation where in perhaps 11 or 12 months the insiders or principals of a public company are looking for ways to sell their interest?

MR. LOWE: Objection.

THE COURT: Sustained.

Q Do you know what the effect of this massive

sale of stock had upon the market?

MR. LOWE: Objection.

THE COURT: Sustained.

Q When you spoke to Mr. Rind did you know what Mr. Rind's position was with the company?

A Packer, Wilbur?

Q Yes.

A Yes.

Q What?

A I always understood him to be in some kind of executive capacity, because I dealt with him.

Q You knew he was primarily in sales, isn't that correct?

A He was in charge of underwritings and distributions, yes.

Q And did you know that he could sign checks?

A I had no knowledge of the internal --

Q That he couldn't bind the company?

A I had no knowledge of the internal mechanics.

Q You merely knew that when it came to underwriting, the finding of deals --

A That is what I dealt with Maurice on, on that basis.

Q Do you know of any underwriting that he ever

dealt with?

A What?

Q Do you know of any underwriting that he ever dealt with?

A That he ever dealt with?

Q Yes.

A I dealt with Maurice in the Robotguard offering in 1969 and Perfect Fit in 1968 --

Q Are you saying he signed an underwriting offering?

A I didn't say that; I said I dealt with him. I don't remember who signed the underwriting papers; it might have been Bob Berkson or Maurice or Bill Hyman.

Q So you really did not know what the internal workings of Packer, Wilbur were?

A No, I only knew who I dealt with there.

Q And as a matter of fact, do you know how many shares of stock were actually sold by Mr. Bloch and Mr. Lipschutz?

A Not unless I check my records. At the time I did find out.

Q It was a very substantial amount, was it not?

A I think Dave Lipschutz may have sold maybe as much as 15,000, I believe, and Bloch may have sold seven

or eight thousand, but that's just a vague recollection. I'm not particularly sure of it.

MR. ANOLIK: I have no further questions.

REDIRECT EXAMINATION

XX BY MR. LOWE:

Q Mr. Salovin, as of July of 1970 were Mr. Bloch and Mr. Lipschutz any longer principals of Robotguard?

A No, they were not.

MR. LOWE: I have no further questions.

THE WITNESS: Thank you.

(Witness excuwed.)

MR. LOWE: The Government calls Irving Bell.

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I R V I N G B E L L , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINAT. ON

BY MR. LOWE:

Q Mr. Bell, directing your attention to the year 1970, did you have a brokerage account with a firm known as Packer, Wilbur & Company?

A Yes, sir.

Q And did there come a timc when you purchased 600 sharcs of stock in a company known as Leasepac Corpora-

tion through Packer, Wilbur & Company?

A Yes, sir.

Q And did you receive the certificates for those shares?

A Yes, sir.

Q And after you received those certificates what did you do with them?

A Well, I kept them for a while and then I --

Q Will you keep your voice up. I am having a little difficulty hearing you.

A I am sorry.

When I got the certificates I kept them until I decided to sell the shares of the company.

Q Then what did you do?

A I notived Packer, Wilbur to sell the shares for me, and they asked me to send in the certificate, which I did, endorsed.

Q And did you receive from Packer, Wilbur & Company the proceeds of any sale of that stock?

A No, sir.

Q Did you ever get the stock back?

A No, sir.

Q Did you authorize them to do anything with your stock other than sell it for your account?

A No, sir.

Q Did you authorize them to do anything with the proceeds of the sale of that stock other than to apply it to your account or deliver it to you?

A No, sir.

Q Directing your attention to Government's Exhibit 3-A for identification, Mr. Bell, are those the stock certificates that you delivered to Packer, Wilbur & Company?

A Yes.

Q And the signatures on the back of each purporting to be your signature, are those your signatures?

A Yes, they are.

MR. LOWE: The Government offers Exhibit 3-A in evidence.

MR. BRODSKY: No objection.

MR. ANOLIK: No objection.

(Government's Exhibit 3-A for identification was received in evidence.)

xx MR. LOWE: I have no further questions.

BY THE COURT:

Q In your dealings with this company did you go there personally or did you use the mails, or how did you deal with them?

A Mails and telephone.

Q Mails and telephone?

A Yes.

Q So you got your confirmations by mail?

A Yes.

THE COURT: All right.

CROSS EXAMINATION

BY BROOSKY:

Q Mr. Bell, your broker at Packer, Wilbur was a person named Mark Fitterman, is that correct?

A Yes.

Q You never dealt with a person named Robert Berkson, did you?

A No.

CROSS EXAMINATION

BY MR. ANOLIK:

Q You never dealt with Maurice Rind, did you?

A No.

MR. ANOLIK: No questions.

BY THE COURT:

Q Are you from Ohio? Is that where you come from?

A No.

Q Where do you live?

A In Maine.

Q In Maine?

A Yes.

Q How did you deal with Fitterman? What office?

A In Dayton, I think.

Q The dealings were in Dayton, Ohio?

A That's right.

Q So the stock got from New York to Dayton to you when you first got them originally?

A Evidently, yes.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Where did you send the stock when you sent it back?

A I'm not certain. I'm not certain of that.

MR. LOWE: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. LOWE: The Government calls Robert Bader.

R O B E R T B A D E R, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q What is your profession, sir?

A I am a dentist.

Q Dr. Bader, directing your attention back to 1970, did you have a brokerage account with a brokerage firm known as Packer, Wilbur Company at that time?

A Yes, I did.

Q Did there come a time when you purhcased 300 shares of stock in a company known as Leasepac Corporation through Packer, Wilbur & Company?

A That's correct.

Q Did you ever receive from Packer, Wilbur & Company the certificates for the 300 shares of stock purchased?

A No, I did not.

Q Did you ever authorize anyone at Packer, Wilbur & Company to use your stock for any purpose whatsoever?

A No, I did not.

Q Did youever receive from Packer, Wilbur & Company any money for your 300 shares of Leasepac stock?

A No, I did not.

Q Directing your attention, Dr. Bader, to Government's Exhibit 6-B in evidence and specifically to the back of each of those certificates,the signature thereon purporting to be Robert Bader, is that actually your signature?

A No, sir, it is not -- no, none of them are.

Q Did you ever authorize anyone at Packer, Wilbur & Company to sign your name to this kind of a document?

A I did not.

MR. LOWE: I have no further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q The man you dealt with at Packer, Wilbur was a man named Mark Fitterman?

A That's correct.

Q In Ohio?

A Yes.

Q You live in Ohio?

A Correct.

Q And lived there in 1969 and 1970?

A Correct.

Q You don't know a man named Robert Berkson, do you?

A No.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q You don't know a Maurice Rind, do you?

A No, sir.

MR. LOWE: Nothing further.

THE COURT: You may step down.

(Witness excused)

MR. LOWE: The Government calls Patricia May.

P A T R I C I A M A Y, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Miss May, back in 1970 and the early part of 1971, what was your occupation?

A I was a secretary at Packer, Wilbur.

Q For whom did you work?

A I worked for Bill Hyman.

Q Did you work for anyone other than Mr. Hyman?

A At times I worked for Robert Berkson.

Q Do you see Mr. Berkson in court today?

A Yes.

Q Is he the gentleman who just stood up?

A Yes.

Q What were your duties at Packer, Wilbur & Company when you were a secretary there?

A I answered telephones, did typing, typed confirmations, posted books.

Q What was your salary?

A I could only guess at that.

Q Approximately.

A Approximately $175.

Q Per week?

A Right.

Q Directing your attention to December of 1970 and January of 1971, did you have occasion to receive some checks from Packer, Wilbur & Company other than your payroll checks?

A Yes, sir.

MR. BRODSKY: May I come up, your Honor?

(At the side bar)

MR. BRODSKY: Your Honor, I know obviously from the last trial what these checks are, and these are as I understand it, checks which only have to do with the cash shortage at Packer, Wilbur, and I want to note

my objection again to this evidence coming in and ask that your Honor exclude it.

THE COURT: I decline to do so.

MR. BRODSKY: Secondly, your Honor, I am afraid that this jury will get the wrong impression about the checks, and would you, when they come in --

MR. LOWE: We didn't have those the last time (indicating).

MR. BRODSKY: I don't know what you are saying.

MR. LOWE: It will be clear to the jury from the combination of those two exhibits what it is about.

MR. BRODSKY: That the checks just went back and forth?

MR. LOWE: Yes. At the last trial we did not have Miss May's checks. We have since discovered them.

MR. BRODSKY: Would your Honor instruct the jury it is coming in on the question of motive only. I am afraid they may think there is something sinister about these checks coming in.

THE COURT: I will tell them it is limited to that.

MR. BRODSKY: Perhaps, if you would -- I don't know how to ask you to do this -- the last time you said it just comes in on the question of motive, and I ask

your Honor, in your discretion, to explain that a little more to them.

THE COURT: I intend to do it on the charge, and I don't see --

MR. BRODSKY: But they get impressions as we go along, and I think it is very important from my point of view that they understand precisely what this is all about, and if your Honor could give them additional words -- you just used the one word, "motive," without really telling them --

THE COURT: I will indicate this is taken for the purose of indicating motive and that might be of some help to them in arriving at where the truth lies in the case, but it is not a charge in and of itself.

MR. BRODSKY: Your Honor did say that this may be something for a state violation, or something, and I would ask your Honor to tell them it has nothing to do with anything in this case except motive, without indicating that it might or might not be a violation --

THE COURT: I wasn't going to say anything like that, but you are putting thoughts in my mind. I am aware I said it and it is the fact that it might be, but I don't know whether it is or isn't.

MR. BRODSKY: But it has nothing to do with

this trial.

THE COURT: That is what I told them. I won't amplify too much at this time, I will do that at the time of the charge.

MR. ANOLIK: I join in the objection.

(In open court)

THE COURT: Do you have an unanswered question?

BY MR. LOWE:

Q I believe the question was, during December of 1970 and January of 1971, did you receive some checks from Packer, Wilbur otherothan your ordinary paychecks?

A Yes, I did.

Q Directing your attention to Government's Exhibit 33 for identification, are those checks which you received from Packer, Wilbur & Company?

A Yes, they are.

Q Could you tell us who signed those checks on behalf of the firm?

A It looks like Mr. Berkson's signature.

Q Directing your attention to Government's Exhibit 33-B for identification, can you identify those documents?

A Yes, I can.

Q Can you tell us what they are?

A They are three checks made out by me to Packer, Wilbur & Company.

Q Drawn on your own personal account?

A Yes.

MR. LOWE: The Government will offer 33 and 33-B in evidence, and also offers those portions of Government's Exhibit 33-A outlined in red as records of Packer, Wilbur & Company relating to the other exhibits.

MR. ANOLIK: No objection.

MR. BRODSKY: I already noted my objection at the bench.

THE COURT: Yes, and I note for the jury's information that this is taken on the question of motive, it is not taken and the Government doesn't offer it as proof of the crime with which they are charged here, but they offer it a a possible motive.

This is part of that same business of getting money into the bank. She got some checks from them, she put checks in, they wash out each other, and meanwhile the money goes through the bank and comes back to her.

She never really got the money -- is that the fact?

THE WITNESS: Yes, your Honor.

(Government's Exhibits 33, 33-A and 33-B for

rm ja 9 May - direct/cross

identification received in evidence.)

MR. LOWE: No further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Miss May, at the time that you were working at Packer, Wilbur, was Mr. Hyman the chief executive officer of the company?

A Yes, he was.

Q To your knowledge, was he also -- do you know one way or the other whether he was the major shareholder of the company?

A To my knowledge, he was.

Q Was it Mr. Hyman who asked you to write these checks to the company and told you that you would get checks back?

A Yes, he did.

Q Not Mr. Berkson; correct?

A He had nothing to do with it.

MR. BRODSKY: Thank you.

MR. ANOLIK: No questions.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Did Mr. Hyman have the power to sign checks on Packer, Wilbur's bank account?

A I assume so.

Q Well, do you know?

A You are talking about a long time ago, and I can't answer that definitively.

Q You just answered Mr. Brodsky's question to the effect that he was the chief executive officer and major stockholder of Packer, Wilbur. You do remember that?

A Yes.

Q Do you remember whther or not he had authority to sign checks?

A As I say, I assume so. All the officers had authority to sign checks, if I am not mistaken.

Q He did not sign the Packer, Wilbur checks issued to you, however, did he?

A Not those, no.

MR. LOWE: No further questions.

RECROSS-EXAMINATION

BY MR. ANOLIK:

Q Mr. Rind had no authority to sign checks, did he?

A I can't say yes or no.

Q If I were to tell you there was testimony that he couldn't --

MR. LOWE: I object to that.

THE COURT: So what? You could tell me that, and I know nothing about it.

MR. ANOLIK: No further questions.

THE COURT: Where were you located in the office, in Mr. Berkson's part of the office?

THE WITNESS: Mr. Hyman's part of the office.

THE COURT: You were the secretary for the both of them?

THE COURT: And he was on the floor all day, from the time he went in in the morning until he came home at night?

THE WITNESS: Yes.

THE COURT: Were you sitting in his office all along?

THE WITNESS: Right outside of his office.

THE COURT: Where was Mr. Berkson as compared to that?

THE WITNESS: In an office on the other side.

THE COURT: But within reach of each other?

THE WITNESS: They were across a corridor from each other.

THE COURT: Did you have anything to do with the mailing of anything?

THE WITNESS: No.

THE COURT: How about confirmations or anything like that?

THE WITNESS. When I first started working for the firm I was hired as a typist and typed confirmations.

THE COURT: You had nothing to do with the mailing, or anything else, in the office at the time?

THE WITNESS: No.

RECROSS-EXAMINATION

BY MR. BRODSKY:

Q Was there a direct-telephone line system from the offices of Packer, Wilbur to the place on the floor of the National Stock Exchange where Mr. Hyman worked?

A To the best of my knowledge, I think there might have been two ways to reach each other, and one would have been by direct line and one by dialing a station, where you could dial directly, off the switchboard.

Q So that at any time anybody wanted, who was in the office of Packer. Wilbur, he could reach Mr. Hyman virtually instantaneously?

A That's correct.

MR. BRODSKY: Nothing further.

THE COURT: You may step down.

(Witness excused.)

MR. LOWE: The Government calls Martin Berkson.

rm ja 13 M. Berkson - direct

M A R T I N B E R K S O N, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Berkson, are you related to Robert Berkson, who is a defendant in this case?

A Yes.

Q What is your relationship?

A Father.

Q Directing your attention back to the summer of 1970, did youhave occasion to have a conversation with your son at that time regarding stock in the company known as Robotguard, Inc.?

A Yes.

Q Approximately when did that conversation take place?

A In the summer, maybe August or September.

Q Was it in person or on the telephone?

A It could be in either place.

Q Well, do you recall specifically?

A No. I'm sorry, I don't.

Q Do you recall whether anyone else was present

during the course of the conversation?

A Nobody.

Q What was the conversation?

A He sked me if I would buy this 10,000 shares of stock, and I said I would.

Q What if anything did he tell you about why he wanted you to buy it?

A Nothing.

Q Directing your attention to page 502 of the transcript of a prior proceeding, I ask you to read on that page lines 7 through 14, just quietly to yourself and let us know when you are finished reading it.

Have you finished reading it?

A Yes.

Q Having read that, does that refresh your recollection as to what if anything your son told you about why he wanted you to do this?

A Well, at that particular time Mr. Hyman asked him to call me and --

Q Is this what your son was telling you?

A This was after I had agreed to buy the stock.

Q Is that what your son said to you, what you just started to tell me?

A Yes.

Q Go ahead. Tell us what he said.

A That if I would help him and buy this 10,000 shares of stock and that it would cost $40,000, and I said I would.

Then a few days later he called and said it wasn't necessary, Mr. Hyman would take care of it.

Q Did your son tell you anything about where the stock was coming from?

A No.

Q Were you familiar with the internal workings of the brokerage firm Packer, Wilbur & Company?

A No.

MR. LOWE: No further questions.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q How old are you, Mr. Berkson?

A Seventy-three.

Q When your son called you in 1970, the summer of 1970, did he ask you if you wjuld buy this stock in order to help him out?

A Yes.

Q Did he say he wanted some assistance?

A Correct.

Q Did you tell him that if he wanted some

assistance, you would help him?

A Yes, gladly.

Q And you had that $40,000 available to you in your bank account, did you not?

A Yes.

Q And much more than that, did you not?

A Yes.

Q Mr. Berkson, you own several commercial buildings in New York and a building in Florida?

A Yes.

Q And you also own and operate, at least to the extent that you are not semi-retired, a bowling alley?

A Yes.

MR. BRODKSY: Thank you.

MR. ANOLIK: No questions, your Honor.

THE COURT: You may step down.

MR. LOWE: Your Honor, I wonder if we could have a five-minute recess at this time.

THE COURT: It is close to the luncheon recess. Please return at 2:15.

Please do not discuss the case in the meantime.

(Luncheon recess)

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AFTERNOON SESSION

(2.15 p.m.)

(In the courtroom - in the absence of the jury.)

MR. LOWE: Judge, prior to calling the jury back in, I thought it might be easier to take care of these matters which would have to be done outside their presence, in any event.

The first thing is that the Government offers, and has offered the grand jury testimony of Mr. Gallentine, that portion which has been read, as substantive evidence in the case; and your Honor indicated -- this was Friday -- that you were reserving decision on that offer, and at this point the Government asks your Honor to rule on whether or not that is admissible as substantive evidence, admissible for the truth of its contents.

THE COURT: I thought the status of that was that either you or the other side were going to submit whatever you came up with as to the line of cases, or otherwise, and I haven't received anything from either one of you.

I will continue to reserve on that. I don't see any reason why I have to rule on that at this point. That will be a question for the charge rather than do it at this time.

MR. LOWE: Well, your Honor, it seems to me there is, the very least, a potential problem on the subject of motions to dismiss the case at the close of the Government's case without that evidence in the case as substantive evidence.

THE COURT: Well, I don't see any difficulty there because I think there is sufficient without that grand jury testimony in the affirmative to submit to the jury in any event. That would only be additional, cumulative evidence on your side.

MR. BRODSKY: Excuse me, your Honor, I assume you would give us an opportunity to be heard on that question at the appropriate time?

THE COURT: I thought that was the way we left it, that you were going to look it up and let me know and see what cases you came up with.

MR. BRODSKY: That's correct.

THE COURT: And I haven't received anything from anybody, and therefore I really done nothing myself because I have been following the case in the meantime.

MR. LOWE: Well, your Honor, I don't have any cases. I think the rule of evidence which permits the admission of it -- I don't know of any --

THE COURT: It would have to be a related

District because we never did it in this District before, and that's why I suggested it to you at the time, since there has been a change in the rule, that there probably would be another District that had ruled on this that didn't have the Second Circuit rule.

Well, in any event, I see no need to go into it at this time and keep the jury waiting. I would rather go into it at some other time.

MR. LOWE: The second thing, your Honor, is that the Government on Friday offered Exhibit 26, being the capital computation performed by the NASD.

Over the weekend I gave Mr. Brodsky the documents upon which that was based, and with the understanding that if Mr. Pilpel were back here to testify, he would testify that the underlying documents were in the files of the NASD, and nothing more than that; that he himself has no personal knowledge of any of this. Mr. Brodsky indicated that he did not need to have Mr. Pilpel back for that purpose --

MR. BRODSKY: As I understand it, Mr. Lowe is making the representation that he understands that Mr. Pilpel would testify that these documents -- we will have them marked in a minute -- were in his file at --

THE COURT: And that they are the back-up

documents for this particular report.

MR. BRODSKY: Does he say that?

MR. LOWE: Yes. These pages were made, as I told you, right off the top of this (indicating).

MR. BRODSKY: You see, that part of it is troublesome to me because -- what was that other man's name?

MR. LOWE: Citron.

MR. BRODSKY: I think Mr. Pilpel says he does not know what Citron did.

THE COURT: No, he doesn't know what Citron did, but, as I understand the situation at this time, he would testify that these were records of the organization he represents, and that they include as part of the records not only the cover sheet which was introduced and marked as an exhibit but also the back-up sheets which were part of it.

MR. BRODSKY: They were part of the record, that's all, yes.

THE COURT: We will mark them for identification as well as the other part.

(Government's Exhibits 26-A and 26-B were marked for identification.)

xx MR. LOWE: And in essence, your Honor, the

Government renews its offer of Exhibit 26 in evidence as a record of the NASD relating to the capital position of Packer, Wilbur as of September 30, 1970 and October 31, 1970.

MR. BRODSKY: Your Honor, I continue my objection now.

My objection is made on the following ground;

Without the person who actually prepared Exhibit 27 for identification, and in the light of the testimony of Mr. Pilpel who says that in preparing Exhibit 27 certain judgmental questions are made, certain assets are valued in certain ways, I have no idea what judgmental questions were made, how these assets were value, and how this work was done; and from just the face of it - and I have tried, and I have looked at Exhibit 26-A and Exhibit 26-B over the weekend - and I have tried to compare it myself to 27, and I can't, just looking at the documents, make the reconciliation myself. I don't know what was done. We could only know, your Honor, from anybody who is qualified to testify that, indeed, 26-A and 26-B for identification are, indeed, records from Packer, Wilbur; they do have it at the NASD as part of what their file is of Packer, Wilbur, but we don't know who prepared 26-A and 26-B, which are really nothing more, as I see it,

without help, as trial balances and statements of certain accounts of Packer, Wilbur.

So I don't believe that Exhibit 26 for identification has been properly qualified in any way, and, certainly there is no way that I can cross-examine on the judgmental questions which were admittedly made not even by Mr. Pilpel, but by somebody who was not in court and whom we did not have an opportunity to cross-examine.

So on the grounds I have stated, your Honor, I respectfully object to 26 and Exhibit 26-A and B --

MR. LOWE: I am not offering 26-A and B --

MR. BRODSKY: Just 26.

MR. ANOLIK: I object to it. I believe that this could be predicated on something that Mr. Hyman had in 1970 which we know was inaccurate, but the HASD --

MR. LOWE: How do you know it is inaccurate?

MR. ANOLIK: I am just saying, which we assume may be inaccurate, and which we would want to question the man who did the audit. We can't question him, that's the point. What verification did we have?

MR. LOWE: The man did not do an audit. He took the papers that were given by the firm and prepared a computation from those papers, and that's what I'm offering as his computation and what he got out of those

documents.

MR. ANOLIK: Would it be fair to say that it was based on information given by Bill Hyman?

MR. LOWE: It's fair to say that it is based on records submitted by Packer, Wilbur & Company to the NASD.

MR. ANOLIK: Which we assume was submitted by Bill Hyman, your Honor.

We think we could make a lot of mileage, your Honor, on cross-examination of Mr. Citron with respect to how he conducted this.

THE COURT: It seems to me there is only one essential element that this thing is trying to prove, and that is the ratio which I think is 13.1, something like that; isn't that so?

What do you say the ratio should be? What do you say the ratio should be?

MR. BRODSKY: I don't have any idea from these records.

THE COURT: You have got a client, and you have talked to him, and I assume he knows something about his own business.

MR. BRODSKY: I wouldn't assume, your Honor, that he knows anything about what the ratio was in 1970

or 1969, and even if he did, your Honor --

THE COURT: Well, you had months and months to look into this. This thing isn't something new to you. You knew this point was going to come up. It came up at the last trial.

MR. BRODSKY: Well, Judge, I don't think I have any obligation to say what my position as to be ratio is.

THE COURT: What you are saying essentially is, as I see it, is that it goes to the weight of what the evidence is rather than to its admissibility. It may be true that you would come up with a different figure; it may be true that you would come up with a lower or a higher figure, but I don't know that that would make that much difference

MR. BRODSKY: I respectfully suggest to you that in my opinion, anyway, it's not a question of the weight; it's a question of the admissibility. I take the position that those documents --

THE COURT: I don't know. It seems to me that in the present state I will allow it in evidence and give you an opportunity to examine the original documents with your expert, or whoever you have got to come up with this, and that is as much as I can give you, and even that I think is more than you should get, because I don't think

it's a question of admissibility. It's clearly documents furnished by the firm to a group that they owed some duty of being truthful with, because this is the whole reason for the administration of this group by this unofficial regulatory association.

Now, if they don't give them proper information the association can't function. So that you can look into this, and I will continue to reserve on this until the end of the case, and you could have your own people look at it, and if you can come up with something different, well and good, you can introduce it into evidence if you want to.

MR. BRODSKY: My point is that I am not introducing any evidence on books and records of Packer, Wilbur.

THE COURT: The books and records are only being made part of the exhibit because you want the back up material in order to discover how they came up with the figures.

MR. BRODSKY: And I am suggesting we can't discover it because the witness who prepared it not a witness here. That is my objection.

THE COURT: Look, what the fellow did in the administrative agency, according to the evidence, he

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took the figures from Hyman and he made a judgment based on those figures as to what the ratio was.

Now, there isn't any reason why an independent man walking out of the door, who is knowledgeable, can't take those same figures and come to a figure also in his own mind, and there isn't any reason why you people can't do it.

MR. BRODSKY: I don't have anything more to say on the subject. I maintain my objection as to inadmissibility.

THE COURT: I repeat, I will give you an opportunity to have your own people look into this and come up with your own figure and see whether they can come up with some other figure. I think it's only offered for that one solitary purpose, as I understand it, to show the ratio.

MR. LOWE: That's correct, your Honor.

THE COURT: Now you can either stipulate a ratio, if you are agreed upon it, or you can get your own people to look at it and come up with a ratio based on papers which were submitted by the brokerage house.

I am sure this is not going to come up now at this particular point in time, so I will take it in evidence subject to that condition, that if you want an

opportunity to do so, you can do what I have suggested during the course of my remarks.

The clerk of the Court will mark it.

But if the jury asks for these exhibits, the only thing they will get is the cover sheets.

MR. LOWE: That's all I am offering, your Honor.

THE COURT: All right.

(Government's Exhibit 26 for identification was received in evidence.)

xx MR. LOWE: As long as we are about it, whether or not it is necessary to call Mr. Soffler to testify to Government's Exhibit 29 being the page from the file at the SEC submitted by Wilbur Hyman on behalf of Packer, Wilbur showing who the officers and stockholders of the company were.

MR. BRODSKY: As I understand it, if Mr. Soffler were called he would testify that this a record taken from the files of the SEC?

MR. LOWE: That's right, and that it was submitted by Packer, Wilbur, and that the signature on the file was Wilbur Hyman's.

MR. ANOLIK: We would object to it, your Honor.

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THE COURT: He is not asking whether you object to it.

Do you want to see the witness or are you willing to stipulate that the witness will so specify?

MR. BRODSKY: As far as I'm concerned I will stipulate that the witness will so testify.

MR. ANOLIK: Your Honor, I would have to examine the witness.

THE COURT: All right, have him come in.

Bring the jury in.

MR. BRODSKY: Your Honor, I will withdraw the stipulation. There is no point to it, Judge.

(Continued on next page)

rb ja 1

(The jury entered the courtroom)

MR. LOWE: The Government calls David Soffler.

D A V I D S O F F L E R, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q By whom are you employed?

A I am employed by the United States Securities & Exchange Commission at the New York office.

Q In what capacity are you so employed?

A As an investigator.

Q Show you Government's Exhibit 29 for identification, can you identify that document?

A Yes, I can.

Q Tell us what it is.

A It is part of a document taken from the SEC files, at the New York office. It is a Schedule A of Form BD and indicates the office of Packer, Wilbur.

Q How does that document get into the SEC file?

A It is filed by the firm, Packer, Wilbur & Company, and is submitted to the SEC office.

MR. LOWE: The Government offers Exhbit 29 in evidence.

MR. ANOLIK: I will object to this.

THE COURT: Objection overruled.

(Government's Exhibit 29 for identification received in evidence)

MR. LOWE: I have no further questions.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Mr. Soffler, did you work with Mr. Lowe on the investigation of this case?

A Yes, I did.

THE COURT: Objection sustained. There is only one question here, did he take this record out of the file, period. Nothing else. Everything else is rebuttal or defense.

You can do it in due course if you want to call him as your witness.

Q Can you tell me whether or not you saw any verification of this in the files of the SEC?

THE COURT: Sustained.

MR. ANOLIK: May I have a side bar, your Honor?

(At the side bar)

MR. ANOLIK: Your Honor, I respectfully submit we should have a confrontation of this witness. I don't think I am bound by the direct examination. I have a right to go into the aspects of this document. I don't think I can ask him whether he took this out of the files only, otherwise I am not cross-examining him.

THE COURT: That is all the voir dire is about --

MR. ANOLIK: This is not voir dire, it is cross-examination.

THE COURT: It is voir dire. He didn't testify to the contents of the document, just as a custodian of a piece of paper from the SEC.

If you want to do that, you have to call him as your own witness.

MR. ANOLIK: My understanding is that I don't have to call any witnesses --

THE COURT: I don't care if you don't call anybody. The point of the rule is that this is at my discretion whether to allow you to do it, and I won't let you do it.

All he has shown up to this point is a piece of paper in the file of the SEC.

"Mode and Order of Interrogation and

Presentation, Rule 611, subdivision (a): Control by the Court. The Court shall exercise reasonable control of the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective to ascertain the truth, (2) avoid needless delay, and (3) protect the witnesses from harassment.

"(b) Scope of the cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of witnesses. The Court may in its discretion permit inquiry into additional matters."

I decline to do that.

MR. ANOLIK: May I go into his credibility, your Honor?

THE COURT: Yes, if it concerns his credibility

MR. ANOLIK: I would like the record to show your Honor sustained objections by the Government --

THE COURT: It is my job to run this trial, not to be run by the lawyers. I couldn't care less if he did it to you or you did it to him, I would do it in the same fashion.

(In open court)

BY MR. ANOLIK:

Q Where did you get this document from?

A That was taken from the files. I have the original copy on the desk over there, on counsel table, and you may see it.

Q You have the original?

A It is right in there (indicating).

(Pause)

Q This is the original of Exhibit 29?

A Yes, it is.

Q Did you yourself make that photostat?

A Yes.

Q Where did you get the original?

A From the SEC's office, 26 Federal Plaza.

Q Who gave it to you?

A It is filed in the office.

Q Tell me physically how you got it.

A I went into the file room and signed out for the document.

Q Did you speak to anybody when you got it?

A I told the people in the file room that I am taking it out, and my name is indicated that I signed out for the file.

Q Do you know how the SEC got the document?

A It was either mailed or it was delivered to the SEC. I have no idea.

Q Were you there when it was delivered?

A No, sir.

Q Did you see it filed?

A No, sir.

Q Do you know who prepared it?

THE COURT: Sustained, on that one.

Q Do you know who in fact filed it?

A Who filed this document?

Q Yes.

A I have no idea.

Q Is this document signed?

THE COURT: Susat:ned. It speaks for itself.

Q Did you speak to any other agent of the SEC concerning this document?

A No, sir.

THE COURT: Sustained as immaterial.

Q Did you independently verify any of the informatic on this document?

THE COURT: Sustained as immaterial.

MR. ANOLIK: I have no further questions, your Honor.

MR. LOWE: Your Honor, I undestand defense counsel are prepared to stipulate to the admissibility under the usual understanding, with regard to how they are to be considered as to Government's Exhibits 30 and 31 for identification, being two charts.

MR. BRODSKY: We are stipulating that if Mr. Soffler testified, he would say he prepared the charts and they were prepared from records in evidence.

I so stiuplate.

MR. ANOLIK: Yes, I have no objection.

(At the side bar)

MR. BRODSKY: I had a problem last time about the title and I think you instructed the jury the title was not in evidence.

THE COURT: Yes, I remember that.

MR. LOWE: That is no problem.

MR. BRODSKY: I would ask the Court to tell the jury that.

THE COURT: Okay.

MR. ANOLIK: The charts themselves have no independent evidentiary value except to assist the jury in the presentation of evidence.

THE COURT: All right.

(In open court)

(Government's Exhibits 30 and 31 for identification received in evidence)

THE COURT: The headings on these were put on there, and they are not really part of the evidence in the case.

What appears on those charts, however, is based on the evidence in the case, and they as of themselves are not evidence, all they do is reflect what happened during the course of the trial, and if there are any errors that will be brought during the course of argument, I am sure.

MR. LOWE: I have no further questions of the witness, and I would like to offer Government's Exhibit 9-A as a record of the Harris Trust & Savings Bank of Chicago, Illinois.

MR. BRODSKY: I have no objection.

MR. ANOLIK: No objection.

THE COURT: Received.

(Government's Exhibit 9-A was received in evidence.)

MR. LOWE: Your Honor, the Government rests.

THE COURT: At this point, we will take a five-minute recess, because we discuss questions of law

rb ja 10

and they are not any of your province, they don't concern you, and rather than have you sit here while we talk at the side bar, you can go in and relax inside.

Please don't discuss the case in the meantime.

(Jury left courtroom)

MR. BRODSKY: Your Honor, on behalf of Mr. Berkson, I respectfully move to dismiss on the ground that the Government has not made out a prima facie case.

Your Honor, it seems to me that in order for the Government to have made out a prima facie case, and I am repeating some of the argument I made in the first trial, they have to prove two things: One, that there is evidence in the record that Mr. Berkson knew about the forgeries; and, two, that there was evidence in the record that having known about it, he participated in some way to make these alleged crimes a part of his own in -- a part of what he was doing. And certainly, your Honor, on the last score, if I can take the two points in reverse, even if one assumes for the moment, which I don't, that there is evidence in this record enough to go to the jury to indicate that Mr. Berkson knew about the unauthorized use of these securities, certainly there is no evidence in the record that he ever did anything, he

rb ja 11

ever did any act which made him a participant in the crime, which made him, as I understand you will and should charge the jury, that in some way he made this crime something which he was interested in, involved with and actively participated in as distinguished from simply being a man who knew what was going on without taking any steps to stop it.

So I suggest to your Honor that there is insufficient evidence in the record, certainly on the latter point, that he participated; and there is no act that any witness has testified to which would let this jury conclude that in any way he participated in any of the counts in the indictment.

I say also that there is insufficient evidence to go to the jury on the question of whether or not he knew that the stocks were being used in an unauthorized way.

Short of that, your Honor, I do believe that at the very least many of these counts should be stricken. I think we have a cutoff date, and even if we take some of this grand jury evidence as substantive evidence in the case, which we have not as yet, as I understand it, it just came in for impeachment purposes, so for -- even if we took it as substantive evidence, there is a point when even Gallentine says he had a stock dividend

rb ja 12

conversation with Mr. Berkson, and that is way behond many of the substantive counts of the indictment, and I think at the very least some of those counts should be dismissed.

This conversation came three or four weeks after the date of September 11th, at the beginning of October of 1969, and many of the substantive counts here took place before that, and it is my position that there is no evidence with regard to those counts.

On those scores, your Honor, I respectfully request that you dismiss the indictment as against Mr. Berkson on the ground that the Government has failed to make out a prima facie case.

MR. ANOLIK: Your Honor, I would join in that motion.

I point out in this trial, unlike the last trial, Mr. Gallentine did not even go as far as he did the last time. The last time he specifically recollected, supposedly, that Mr. Rind told him to forge certificates and he never said that this time.

He merely said Mr. Rind in his opinion was aware of what had to be done and did not indicate that he participated in it. He said, "Do what you have to do." I don't think that amounts to active participation in a

rb ja 13

criminal conspiracy or in any of the substantive acts in the indictment.

I submit this case is far weaker than the one you let go to the jury last time, and I would ask for a dismissal.

THE COURT: Let me see the indictment.

(Pause)

THE COURT: I will reserve on that sufficiently for me to take the indictment and take a look at it, and I will be out in a few minutes.

(Recess)

THE COURT: In reference to the motion made by the defendant Berkson, which the Court deems to have been made as to each count in the indictment, which runs through to count 10, inclusive, the argument substantially made as far as when the date was that he possibly could have known and possibly could have participated applies really only to two counts, count 5 and count 7.

I deny the motion as to all the counts, however, because I feel there is a jury question here as to when he did gain knowledge and when, if anytime, he did participate. That is a jury question, and I leave that to the jury.

The motions are denied with an exception to the defendant Berkson as to each ruling.

rb ja 14

In reference to Rind, the motions are denied, and I deem the motions made to all counts, 2 through 9, inclusive, and they are denied as to all those counts, with an exception to the defendant Rind.

Are the defendants prepared to proceed?

MR. BRODSKY: Defendant Berkson rests, your Honor.

MR. ANOLIK: Defendant Rind rests.

THE COURT: How much time do you want for summation?

MR. LOWE: I think, your Honor, about an hour.

MR. BRODSKY: I think about an hour, your Honor.

MR. ANOLIK: About an hour, your Honor.

THE COURT: Then we will proceed with the Government and Mr. Berkson, and then we will continue on tomorrow morning.

The rulings on the requests and what-not, are the same as made at the last trial, and I don't see any reason to go through that again, because we can incoprorate them by reference and make them a part of this record.

Is that satisfactory?

MR. LOWE: Your Honor, the last time you indicated that your Honor would charge the jury on the

rb ja 15

subject of deliberately closing one's eyes, and it is my recollection that in the actual charge you did not mention that subject to the jury.

THE COURT : I have to look at it again. I have not looked at this charge since I last gave it.

The court reporter has the charge, and I have been waiting to get it from him, and we don't have it yet, but I think that is the law in this district, that language has to be used in this district.

MR. LOWE: At this point, before I sum up, I need a ruling on the question of Gallentine's grand jury testimony.

THE COURT: Yes, that is so.

MR. LOWE: It seems to me that the federal rules of evidence provide that when a witness gives testimony which is contradictory to his grand jury testimony, his grand jury testimony becomes admissible not only to impeach him but as substantive evidence and the reason given by the commentators was that the existence of this evidence should not be denied to the proponent of it simply because the witness changes his story, provided it meets the test of being inconsistent and having been given on a prior occasion under oath.

I believe both of those criteria are satisfied

rb ja 16

by Gallentine's grand jury testimony. It is inconsistent, it was given under oath, and in addition to that, Mr. Gallentine testified that in fact he gave that testimony under oath in the grand jury, although he testified, to use his euphemism, that it was inaccurate.

THE COURT: I am familiar with the rule, and I know, as I indicated before, that this is a change in this district.

Are you aware of any case that says this district still is not affected by the change in the rule, Mr. Brodsky?

MR. BRODSKY: No. This district is certainly affected by the change in the rule, I don't argue that at all, it is plain English.

But this is my argument, Judge: Here we have a situation where a witness testifies before the grand jury where there is no lawyer present on the other side there is no judge to rule on the propriety of the questions--

THE COURT: I am aware of your argument, and I would say, as I said months before, that is what you can tell the jury when you get to that point, if you get to that point.

Under the situation, I find there is substantive use and I will allow it, with an exception to each

rb ja 17

defendant.

I think your argument should be made to the jury rather than as a matter of law. It is not a matter of law.

Bring in the jury, please.

(Continued on next page)

(The jury entered the courtroom.)

THE COURT: Members of the jury, we have concluded the taking of the evidence. All the parties have rested, and we now get on to that second time the lawyers get an opportunity to speak to you, which is called summation, and the way that proceeds is this:

The Government speaks first; the defendants then speak if they desire to do so; there is no obligation on their part to do so; and then after they get through, if they avail themselves of the opportunity, the Government gets a short time for rebuttal.

So what will happen here as far as we can figure out this point is that Mr. Lowe will speak for about an hour, and Mr. Brodsky will then speak for about an hour, and then we will suspend until tomorrow morning until 10 o'clock, and then Mr. Anolik will speak for about an hour, and then Mr. Lowe will respond, and after that's concluded I will charge you on the law as it applies to these facts, and you will find the facts and the apply the law to it. You should get the case tomorrow for deliberation.

MR. LOWE: Thank you, your Honor.

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SUMMATION IN CHIEF ON BEHALF OF THE GOVERNMENT.

MR. LOWE: Counsel for the defense, and Madam Forelady, ladies and gentlemen of the jury:

As his Honor has just told you, this is pretty much the end of the case. All of the evidence that there is for you to consider is now before you. There is not, nor will there be, any more evidence.

What you are about to hear is essentially two things, one, a review of the evidence, and, two, some thoughts on what conclusions you can draw from the evidence.

Now, what does that mean?

As I told you in the opening statement, what the lawyers say during the course of a case is not evidence. You are limited in what you consider in making you determination to the testimony that you heard, to the documents and to any stipulations that may have been entered into during the trial.

There is one thing, however, that you came here with, that you had with you while you listened to the evidence, that you have operating while you listen to the talk, and that you will have with you when you are in the jury room deliberating, and that is, plain and simply, your own common sense, your intelligence, your ability to listen.

Because when you hear testimony and see documents, they may persuade you to conclude something that by themselves they don't say. But you may reasonably draw such inferences as you choose from the actual factual evidence that has been put before you.

Now, as you know, this is a criminal case, and because it is a criminal case the Government, the prosecution, has the burden of satisfying each and every one of you beyond a reasonable doubt of the conclusions which the Government asks you to draw before you can draw that conclusion; that is to say, before you can find these defendants guilty of the charges.

Now, I am sure you will hear more about that from the other attorneys, and you will hear it defined for you by the Judge.

Now, I don't want to make a big deal out of it, but simply to say this, that in any matter as serious as a criminal case, it is vital to our system of justice that the standard that you apply be a stringent standard. In our system a person is not to be branded a criminal unless and until a sufficient amount of proof to convince you beyond a reasonable doubt is presented. And that is the burden that the Government has and that is the burden that we gladly assume, because that's the way it has to be.

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Let me now, I hope briefly, review with you what the evidence does show, and just what it is that the Government believes you can conclude from that evidence.

We start out with the background, the financial condition of the brokerage firm of Packer, Wilbur & Company; and I am going to spend a little bit of time dwelling on exactly what the financial condition was, and let me at the outset tell you why it is important:

Nobody is charged here with being broke, with being short of money or anything like that; in fact, if you find it to be so -- and, indeed, I suspect you are not going to hear a lot of argument on whether it is so, that Packer, Wilbur was in very difficult, if not desperate, financial circumstances, does not mean that these people are guilty of a crime.

What it does mean, however -- and this is why it is important -- is that this may be an explanation for why the activity, the illegal activity that they are charged with, was done.

Now, we start out basically in the month of August 1970, and we will be continuing for a period of time that ends some time in March of 1971, roughly six or eight months.

In August of 1970 what do we know about Packer,

Wilbur? We know that their bank account was overdrawn almost every day.

Now, that by itself is only a little bit. But consider this. It is probably likely that every one of us in this room on one occasion or another has bounced a check. It happens. You make a mistake in your calculations; you forget, you might once in a while bounce a check, and it's no crime.

But these people, this firm was overdrawn almost every day in the month of August. As a matter of fact, I think the record shows that for the month of August there was a grand total of three days in which they were not overdrawn. And the amount of the various overdrafts indicates that it was no mistake; because the amounts are often as high as $100,000 or more; and you will be able to look, if you wish, during your deliberations at the statement of the bank account of Packer, Wilbur for August and the statement for September, and it will show right on that statement. Actually, in September they did a little better. I believe there were five days in September when they were not overdrawn. And, again, overdrawn in very large amounts.

Now, that is not the only problem that they had, ladies and gentlemen.

Do you remember Mr. Gallentine, while he was testifying, kept trying to tell us how "We had this cash flow problem; we had this cash shortage," et cetera.

Well, ladies and gentlemen, they had a little more than a cash shortage. In fact, the evidence indicates that they were, for all practical purposes, bankrupt by the end of September 1970; and there is a specific exhibit, Government's Exhibit 26, which shows that at the end of September the amount of their capital and the amount of their debts -- or, actually, I should say it the other way around so the ratio comes out -- the ratio of their debts to their capital at the end of September 1970 was something like 62 to 1. By the end of October of 1970 there was no ratio because they did not have a plus in their capital account; their net capital came out to a minus figure; and from that you might conclude that these guys were in desperate financial condition.

Now we have basically three people that you can tell from the evidence had a real concern for the financial condition of this firm. None of them were James Gallentine. The first person who had a concern was Mr. Hyman. Mr. Hyman was not only the president and chief executive, and whatever else you might call him, of that firm: he also owned a piece of the firm. That

is to say, that he owns as his own personal asset a percentage of that firm's assets.

Mr. Berkson, the evidence shows, also had a piece of the action, owned as his own personal asset a percentage of the firm. And one of the last documents in evidence, the document on file at the SEC, shows that Mr. Rind also owned as his own personal asset a portion of the assets of Packer, Wilbur & Company.

They were the three major stockholders; they were the officers; they were the directors; they were, ladies and gentlemen, as I told you in my opening statement, the top layer at Packer, Wilbur & Company. They were the executives, the bosses, people who made the policies or made the decisions that ultimately were carried out by people below.

To give you an idea just how desperate these people were in terms of their financial condition, think about the checks that went into evidence payable to James Gallentine and the checks that went into evidence payable to Patricia May. We know that those checks did not really represent money being paid to those people, because we know that those people gave their own checks for the same amount of money on about the same day back to the firm.

Now, once again, we know that that is not the crime for which these people are on trial. Indeed, it may not be a crime at all; but even if it is a crime, it is not the crime for which they are on trial.

(Continued on next page.)

We do know that they were desperate enough to engage in kiting checks, with the aid of their employees, just to have for even a brief period of time some money in their bank account.

You will recall, ladies and gentlemen, Mr. Gallentine told you about how they operated with their bank. Even though they had transactions which were not going anywhere, which were not really going to generate any money, they could put those transactions in the bank and the bank would give them immediate credit because the bank didn't know that those transactions were not going anywhere.

Similarly with the checks. If you have a good relationship with your bank, your bank will allow you to draw on what is called uncollected funds, and that gives you the period of time it takes for those checks to wash out, to use that money, and the bank is not doing this just to be kind, the bank makes money doing this. They charge interest for the number of days they have advanced this money against what they believe is solid collateral.

MR. ANOLIK: Objection, your Honor. There is no evidence about charging interest.

THE COURT: Well, this is argument, and there is no specific evidence that interest was charged, but it is only a matter of argument.

In any event, ladies and gentlemen, that is the picture, the background within which the events which constitute the basis for the charges in this case took place, to help you understand a little bit about why they took place.

I think you all agree that one of the strange things about this case is the crudity of the scheme. Basically, what these people were doing was committing forgery and literally stealing stock that belonged to the customers of the firm and selling it or pledging it as collateral and using the proceeds for themselves.

Now, even a halfwit can say to himself, "Sooner or later this is all going to blow up in my face, and I am going to get caught, because somebody is going to ask where their stock is, and I won't have it to give them."

You may be wondering how could people who were intelligent enough to run a brokerage firm be so stupid to take such a risk.

Well, let me suggest to you two answers to that question: Number one, it is simply that when in desperate straits even intelligent people have a tendency to do stupid things. Mr. Gallentine testified to something that may be will give you a clue to why they might have taken the risk involved.

rb ja 3

You remember Mr. Gallentine saying that he was told that the firm had warrants to purchase 20,000 shares of Leasepac stock. Now, that meant that gave them the right to buy from the company 20,000 shares of this stock at a stated price, whatever that price might have been, gave them the right to buy 20,000 shares, and it took some money to do that.

You remember that Mr. Gallentine also testified that Mr. Rind was talking about bringing a million dollars of new capital into the firm. Now, from that you can see that perhaps what initially seems like a stupid risk is not quite so stupid after all, because here is what happens:

You have customers who purchase stock through you, you are holding the stock, they have not, up until this point of time, asked for it, they are happy to have it sit there, it is easier than being responsible for it themselves -- they have not asked for it up to now, and basicly I think you can find the concept of what they intended to do was that for the period of time that they needed it, they would use the customers' stock and then comes prosperity, which is right around the corner -- it seems somebody named Herbert Hoover said that just before the roof fell in back in 1929 -- but people have a tendency to

rb ja 4

believe that tomorrow things will get better and everything will be all right, and you might find what these people believed was that sooner or later Mr. Rind was going to be able to come up with somebody who was going to put a million dollars of fresh capital into thatfirm, and once they had that million dollars they could exercise their warrants and get enough Leasepac stock to replace what they had taken from their customers, and then whenever their customers asked for the stock, they could give it to them and no one would be the wiser..

It is kind of like paying today's debts with tomorrow's income without being terribly sure that you are going to have any income tomorrow, but hoping like made that you are.

It is like living beyond your means in the hopes you are going to get a raise to eventually pull yourself out.

But it is not quite as innocent as that, because along the way what you have done is not simply borrow more money than you could afford to pay back, but what you have done is without authority, without your customers even knowing about it, taking your customers' property and using it as if it were your own, and that, ladies and gentlemen, is practically a textbook definition

rb ja 5

of stealing.

So now we have seen what you might find is the why of it, and now we have seen what you might find was the how of it.

Let me quickly review the what of it, and then we will get to the who part.

From the evidence we find that in about the middle of August Mr. Rind, who apparently has a connection at the Euclid National Bank in Euclid, Ohio, is able to arrange to borrow $300,000 from that bank, but he needs collateral for the loan, and that collateral, among otherthings, consisted of 10,000 shares of Leasepac stock.

We know that the authority for Mr. Rind to borrow that stock from Packer, Wilbur had to be given to him by the firm, and we know that it was, and we have a certificate that says the board of directors approves allowing Mr. Rind to borrow this 10,000 shares of Leasepac stock and use it to secure this loan, and we know from Mr. Gallentine that the idea was that the proceeds of this loan would go into Packer, Wilbur's coffers and be used to run the business.

We also know that the certificate of the resolution of the board of directors for that transaction was signed by Robert Berkson.

Now, all of that is very interesting, but what

rb ja 6

is there about that transaction? What there is is that that is the first time that the shenanigans started to take place.

Remember what Mr. Gallentine said, and at some point later in my talking to you this afternoon I will have a lot to say about Mr. Gallentine, but for the moment just focus on what he said about this one occasion.

Mr. Gallentine testified that Mr. Rind came in and said to him that he was going to be taking 10,000 shares of Leasepac stock to secure this loan at the bank and told him to get up the 10,000 shares, and Gallentine said he proceeded to collect all the shares that they had available to them, and he came up short, didn't have 10,000, and he said he went to Mr. Rind and told Mr. Find, "We don't have certificates for 10,000 shares available to give you."

Then there is some discussion between the two of them about what to do, and I don't think it is clear from the testimony of Mr. Gallentine, and I don't think that it matters, whose idea it was, but they came to the conclusion that the solution to that problem lay in the customers' stock that they had in safekeeping; take that stock and use it to get up the total of 10,000 that they needed.

We know from the records that they took the

rb ja 7

stock of Jeffrey Goldman and they took the stock of Elaine Mayerson, and we know from the records that they sent that stock into the transfer agent, who cancelled it, and issued new shares in the name of Pack-Wil, which, as you recall, is the name Packer, Wilbur used for its own stock in the street name.

And we know from the testimony of Jeffrey Goldman and from Mrs.. Mayerson that the signatures of the customers on the stock transfer powers were forged.

What is a stock transfer power? Let me compare a stock certificate and a check. Some of you may not be familiar with stock certificates, but probably all of you are familiar with checks.

If someone writes out a check to your order, in your name, it requires in order for it to be negotiable, to be transferred by you to somebody else or deposited in your bank, or whatever, that you endorse it on the back. In essence that is what a stock transfer power is. The person in whose name the stock is issued, Jeffrey Goldman, Elaine Mayerson, or any of the people you saw today, in order for that stock certificate, and the certificate is like a check -- a check is not money, it is evidence of money -- the certificate, simply, is evidence of the ownership of the stock of the company.

rb ja 8

In order for that stock certificate to become negotiable, to be handed over to another person who could then hand it over to yet another person, it requires that the person to whom it is issued endorse the back, and that can be done right on the back of the certificate itself or, in this case, as is often the practice in Wall Street, on a separate piece of paper known as a stock transfer power. And all that says is that the stock certificate to which this is attached is hereby transferred to whoever, and a signature goes on, and that signature is subsequently guaranteed by the brokerage firm at which that person has an account, and then it becomes negotiable and it can pass through half a dozen hands without ever being transferred into anybody else's name.

In any event, that is the first time that we find the unauthorized, illegal use of customers' certificates and the forgery of customers' names.

We know that Mr. Gallentine gave that stock to Mr. Rind, and we know that the stock that resulted, the stock that was issued back to Pack-Wil, found its way to the Euclid Bank to be collateral for that loan of $300,000.

Now, at some point someone is going to say to you, "Mr. Gallentine is not a very nice man," and I guess

rb ja 9

that's pretty correct, he is not. He is an admitted criminal. He has admitted that he took part in the various criminal transactions that he testified about.

This about this: Remember who he was back then. He was the cashier, an important man, but by no stretch of the imagination the most important. He was only an employee. He did not have ownership interest in the firm. All he got out of any of this was his salary which, at its height, was only $300 a week. That is not bad pay, but certainly not a great deal.

The point, ladies and gentlemen, is that it is all but incredible to think that Mr. Gallentine did this on his own. There was no reason for him to do it on his own because there was no real benefit to him for doing it. The benefit was to the firm and to the three people who had an interest in the firm, and you might reasonably conclude that at least one of those three people had to be behind this thing, because there was no othe reason for Mr. Gallentine to have done it.

Okay. That was the first time, but that was not the last time. We know that at about the same time, or within a few days of this first transaction, we have a couple of sales of Leasepac Corporation stock by Packer, Wilbur to a firm named Schreiber Bosse in Cleveland, Ohio,

rb ja 10

and the record indicates that those transactions took place about -- two transactions, about a week apart, in the second half of August of 1970.

We know from the records that the delivery of stock to satisfy those transactions, stock certificates that were delivered were stolen from the customers of Packer Wilbur. We know from what Mr. Gallentine said that Mr. Rind was the one who set up these transactions.

He said that Mr. Rind told him that, and he also said that he told Mr. Rind that they didn't have any certificates to deliver.

Once gain we get into a question about Mr. Gallentine. Did Mr. Rind tell him what to do or not? Mr. Gallentine at some point in his testimony said, "Well, look, it was really just understood that this was the way it was going to be, because that is what had to be done."

What he meant by that, I think, was this: No question, according to his testimony, that he was telling Rind -- Mr. Find, the defendant here -- that they didn't have stock of their own to use and they had to use customers' stock.

First of all, there may be some argument about whether or not at this point the subject of actually forging the customers' names came up, but what Mr. Gallentine said

rb ja 11

was that the only way to use the customers' stock was to forge their names, because, you remember, as I explaind to you a little while ago, that is the only way the certificates could become negotiable, and with the one exception of the customers who came in and testified, one of whom said, "I signed the stock transfer power," when he sent it back to them, all of the others not only didn't sign the stock transfer powers but had never even seen their stock, it had been sitting at Packer, Wilbur from the day they bought it, and at the very least Mr. Gallentine's testimony says Mr. Rind said, "Do what you have to do."

Ladies and gentlemen, one thing about the commission of a crime, people don't usually sit down and say among themselves, "Look, we are going to commit a crime, and we are going to commit this kind of crime, and this is exactly how we are going to do it."

People don't talk in those terms. What they do do is say, as Mr. Gallentine is reporting to Mr. Find, "Our backs are against the wall. The banks are calling and we have overdrafts, and we have to cover the overdrafts."

Mr. Rind, who is apparently the supersalesman of the firm, arranges to sell stock to another brokerage firm to generate some money. This transaction comes to Mr. Gallentine for him to get it together and ship it to

rb ja 12

the bank, and he didn't have stock certificates, and he tells Mr. Rind, "We don't have any stock certificates. All we have is customers' certificates."

Mr. Rind probably doesn't say, "Let me tell you what to do, forge the customers' names, have some of the clerks forge the customers' names."

He didn't have to say that. He tells Mr. Gallentine what? "Do what has to be done." That's all Mr. Gallentine has to be told, because Mr. Gallentine is not a nincompoop, he is the back office man, he knows what has to be done in all of these transactions, he is the man familiar with the records, the books, the actual physical handling of the stock. And when Mr. Rind tells Mr. Gallentine, "Do what has to be done," he is telling Mr. Gallentine what to do, use the customers' stock, and by inference, "Forge their names on the stock transfer powers if you have to."

So we have those transactions, and once again, like the $300,000 loan transaction, the money from those transactions did not go to Mr. Gallentine, the money went into the bank account of Packer, Wilbur where it benefited the business of Packer, Wilbur and, indirectly, the people who owned that business.

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Now, we learned that Leasepac was not the only stock that some games were being played with. Robotguard was another.

And I would like to go in with some detail to you about Mr. Bloch's stock and what happened to it.

If I set this down right here, is there anyone that can't see it (indicating).

Now, the title of this is "History of Robotguard Issued to Ephraim Bloch."

Now that's a little bit misleading because we know that Ephraim Bloch had more stock than the 27,540 shares referred to here. This is really the history of the Ephraim Bloch stock after it got delivered to Packer, Wilbur, but that's kind of a long title, so we made it a little shorter.

We know that Mr. Bloch had some amount of Robotguard stock in excess of 27,000 shares; and we know that some time in July or August of 1970 Mr. Bloch sold some of the stock. We know that his friend and associate, Mr. Lipschutz, also sold the same stock.

Now, we also know this, that the people than ran Packer, Wilbur & Company were very unhappy about the fact that Mr. Bloch and Mr. Lipschutz were selling their stock because the sales were hurting the market.

Now, how do we know that? How this stock came into the possession of Packer, Wilbur is important in terms of understanding who knew what awnd when they knew it, and what they nevertheless allowed to happen.

You remember Mr. Gallentine testified that when the stock came in he was told by Mr. Hyman, "Oh, this stock is really ours; we own it and you can use it."

Now, I don't know whether Mr. Gallentine believed it when he heard it or not. He did a strange thing assuming that he believed it. What he did was make a record that showed the stock being placed into Ephraim Bloch's account.

And you might ask yourselves, ladies and gentlemen, if he really believed that this was Packer, Wilbur's stock, and Packer, Wilbur could do with it what they pleased, why did he put it in thebooks and records as being in Ephraim Bloch's account?

I will suggest to you the answer. The answer is that you could find that he knew what was going on; that he knew that they didn't really own it; that they really didn't have the right to use it; and he also knew that the records of the firm had better reflect the real situation, that this is Mr. Bloch's stock; because if anybody ever comes and looks at the records and we don't

have on our records that we have 27,000 shares from Mr. Bloch, we'll be in trouble. And just like all the other customers, they took their stock, but they didn't like the records of the firm to show whose stock they were supposed to have.

And you will notice that they gave Mr. Bloch a receipt, and that receipt is in evidence.

Now let's duck back, though, to before Mr. Bloch gave his stock to the firm -- delivered it to the firm, I should say, because he didn't really give it to them.

Bloch sold some of the stock; Lipschutz sold some of the stock, and appently the principals of Packer, Wilbur didn't like that very much because it was hurting the market.

Now, how does that happen, you might wonder. The market operates basically on a principle of supply and demand. The more stock there is available for sale, the less people are willing to pay for it. The more people want to buy it and the less there is for sale the higher the price will generally go. So when somebody like Mr. Bloch, who has a lot of stock, and Mr. Lipschutz, who sold maybe 15,000 shares, sell their stock, sometimes it makes a glut on the market, more tock than anybody

wants to buy, and that means in order to sell it the price has to be lowered, and that hurts the market if you're interested in the market.

Now, Mr. Bloch and Mr. Lipschutz both said, well, most of their dealings were with Wilbur, Hyman, and you are going to hear a lot about Wilbur, Hyman, ladies and gentlemen, I suspect, and how he is the real bad guy, he did it all, and he's over in Spain some place, and he is not available, and he is not here.

Well, it is true; Wilbur Hyman was a bad guy, Wilbur Hyman is in Spain, and Wilbur Hyman is not here and not available.

But I submit to you, ladies and gentlemen, the evidence shows that he is not the only bad guy. Right now he may be a convenient fall guy to explain who is responsible, but the evidence shows he is not the only one.

Because think about what happened. The sales were made, and Mr. Allan Salovin, who was the attorney for Mr. Bloch and Mr. Lipschutz, and for their companies, and everything, who knew these people really well, he knew Mr. Bloch, he knew Mr. Lipschutz, and he knew the Packer, Wilbur people, because that group of people had done a lot of business together. The underwriting of

the companies that these guys were interested in had been done by Packer, Wilbur, and right at this particular point in time Mr. Bloch told you they were in the midst of negotiating to do yet another underwriting and offer more stock to the public. They were tight; they were friends.

Mr. Salovin gets a phone call at home at night, wich may give you some idea of the urgency with which this situation was viewed, and the first call he gets is Robert Berkson wants to speak to him.

Robert Berkson says, "Are Lipschutz and Bloch selling stock?"

And, of course, Mr. Salovin says, "I don't know, they might be.

"And did you issue an opinion that said itwas all right for them legally to do that?

"Yes, I did.

"Okay, thanks. Good-bye."

Now, remember this, how that call came in.

He said there was a girl named Pat who was the secretary, probably Pat May, testified, and when he picked up the phone Pat was on the phone and said, "Mr. Berkson wants to talk to you."

After his conversation with Mr. Berkson, in

just a very few minutes, the phone rings again, and again it's Pat, and this time it's Maurice Rind who wants to talk to him.

Now, what do we know from that? We know that Mr. Berkson and Mr. Rind were together at the time of those conversations; they were in the same place. And from that you can conclude that they were talking to each other about what was going on.

Berkson calls and finds out the fact that Mr. Salovin has given this legal opinion. You might presume or assume or conclude, it's a better word, that he reports that fact to Mr. Rind. Mr. Rind, who one of the witnesses characterized as having quite a temper and being excitable, apparently got very exercised about this situation, and he himself talks to Mr. Salovin in rather impolite terms.

But that we do know about all of this is that both Berkson and Rind what was happening with Mr. Bloch's stock and Mr. Lipschutz' stock, namely, that they were selling it for their own benefit, according to their lawyer, legally, and taking the proceeds, and doing with the proceeds whatever they wanted.

We know that on a Monday morning in August Mr. Hyman is on the phone with Mr. Bloch; and Mr. Hyman

is telling Mr. Bloch that he and his partners -- I don't believe he said by name but I think we can conclude that he must have been talking about Mr. Berkson and Mr. Rind -- were very unhappy about the fact that Bloch was selling his stock; and to insure that Mr. Bloch would not sell any more of his stock, Mr. Bloch should deliver his stock with Packer, Wilbur where they could sit on it and make sure he couldn't sell it.

Now, you might say to yourself, why would Mr. Bloch be willing to do this? If he had the right to sell his stock, and it was proper for him to sell it, and he wanted to sell it, why would he agree not only agree not to sell it but even go so far as to deliver the stock to Packer, Wilbur for them to sit on it?

Remember this: Mr. Bloch's relationship with Packer, Wilbur was something more than the relationship of customer and broker. Mr. Bloch was negotiating with Packer, Wilbur to have an underwriting done. It was to Mr. Bloch's advantage and interest to keep Packer, Wilbur happy, to keep the principals happy so that they would do for him what he wanted them to do. And you might find that that was the reason why he was willing to go along and do what they wanted him to do.

And then the next thing we see is that Mr.

Bloch's stock starts going out of Packer, Wilbur.

Look at the dates, August 20, 1970, Mr. Bloch delivers 27,540 shares to Packer, Wilbur. August 20, 1970, a sale of Robotguard stock is made. It is made to the account of R. D. Berkson & Company at Sterling National Bank, and the stock that is delivered for that sale is 10,000 shares of Mr. Bloch's stock, with Mr. Bloch's signature forged on the stock transfer powers.

Now, I wonder when you put that set of facts together starting with Mr. Berkson's phone call to Mr. Salovin and ending up at the Sterling National Bank, do you suppose that Mr. Berkson might have known what was going on? Do you suppose it is incredible that he didn't know what was going on? Because there is something funny about the transaction itself in addition to the fact that they used, illegally used, Mr. Bloch's stock.

Look what happened: The stock got delivered to Sterling National Bank, but it never got paid for. It bounced back to Packer, Wilbur.

Now, you remember what Mr. Gallentine said, that when they needed money, they had a stock transaction, and the stock certificates, they delivered them to their bank, and their bank would give them immediate credit. Well, here we have $40,000 worth of credit for the Robotguard

stock, and nobody paid for it. But look how long it took to come back. It went out on the 20th of August; the very same day it was delivered in it went right out to an account that Mr. Berkson was responsible for. It wasn't returned for a month. September 22, 1970 it got returned unpaid.

Now, you will recall that Mr. Berkson's father was on the stand and he said that back in August of 1970 he got a call from his son. Basically he wanted his father to buy 10,000 shares of Robotguard for $40,000 to help him out. And Mr. Berkson, Mr. Martin Berkson, said, "Okay, I will do it," and I gather from his testimony that he could afford to do it.

Then he said, "I got a call a couple of days later saying it's off, we don't need it, we don't need the money."

Now, No. 1, you can conclude from that that Mr. Berkson certainly knew about this transaction, Mr. Robert Berkson, that is.

And then what happened? For some reason he didn't need the money.

Well, the stock sat for a month at Mr. Berkson's bank, and we know from the bank account statement that there wasn't any money in the account of R. G. Berkson to pay

for it.

Now, I wonder if Mr. Berkson didn't have a friend at Sterling National. Everybody has a friend at Chase Manhattan, but I guess Mr. Berkson might have had one at Sterling; because somebody at Sterling Bank, despite the fact that there was no money in the account to pay for the $40,000, didn't just bounce it right back; it took a month, a month during which Packer, Wilbur had the use of that money; and maybe because of that friend Robert Berkson did not have to put his father's $40,000 at risk, which you might find is a noble gesture.

(Continued on next page.)

Well, we also learned, ladies and gentlemen, that shortly after this stock came in some more of it got sold, this time to First Philadelphia Corporation, 15,000 shares, on the 28th of August, eight days after it got in, and we know from Mr. Gallentine's testimony that this transaction is very similar to the Sterling Bank's R. G. Berkson transaction.

When this stock went out, purportedly sold to First Philadelphia, Gallentine said Rind had told him that they were going to buy it back in a short time, but for a few days they would have some way of covering their overdraft -- for a few days.

The 28th of August the stock goes out to the bank to be delivered to First Philadelphia Corporation, the bank gives them credit for the transaction. I guess this one was about $60,000 for 15,000 shares.

Three days later Packer, Wilbur buys it back from First Philadelphia, and it comes right back to them..

So then what happens? In effect, for a couple of days, Packer, Wilbur has used this essentially phony transaction to cover its overdraft for those few days, or at least to try to cover their overdraft.

So far nothing speculatur has happened and, what is more important, nothing has happened to let anybody know

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that anything wrong is being done. Certainly nothing has happened to clue Mr. Bloch in, but look what happens next to Mr. Bloch's stock.

If you will just look over there, you will see the name Abe Katz, and you will recall Mr. Katz got on the stand and said, "I from time to time arranged loans for Packer, Wilbur, and they gave me stock to use as collateral for those loans."

He said that on September 2nd of 1970 he loaned them some money and they gave him 5,000 shares of Robot-guard stock as collateral. What do we know about that stock stock? We know that it was Ephraim Bloch's, because the numbers are right on the delivery to Mr. Katz, and we know Mr. Gallentine testified that after getting the forgeries done, or the forgeries had already probably been done, to sned to First Philadelphia, he delivered that stock that wound up with Mr. Katz to Mr. Rind.

So we know that Mr. Rind had the stock in his hands. Then we know from Mr. Katz that he got the stock from Mr. Hyman, because Mr. Hyman was the one he mostly dealt with.

That, ladies and gentlemen, tells you, in effect, that at the very least Mr. Rind and Mr. Hyman were working together on that transaction and that they both knew what

rb ja 3

was going on.

Mr. Katz did not sit on the stock and put it in his pocket. He loaned money to Packer, Wilbur, but in order to get that money, he went to his bank, the Atlantic Bank, the very next day and delivered it to his bank and his bank loaned him money.

So Mr. Katz was not out the cash at that point. Also, the stock got to the Atlantic Bank. The Atlantic Bank got the stock in and they had it for the account of Abe Katz, and because it is collateral, they want to be able to sell it easily, and they have a piece of paper from Mr. Katz that says, "Any of the stock you have that is mine, that I gave you, you can sell if I don't pay the loan," but in order for them to do this easily, they like to have it in Mr. Katz's name.

What they did was send it to the transfer agent, the First Jersey National Bank, in New Jersey, to be transferred into Mr. Katz's name, so that it would be obviously Mr. Katz's stock. That doesn't change whose stock it is, it just changes the name on the cover so it is obvious whose stock it is.

In any event, they sent it to First Jersey National Bank to be transferred into Mr. Katz's name, and that happened on the 3rd of September 1970, and First

rb ja 4

Jersey National Bank transferred the stock into the name of Mr. Katz and out of the name of Ephraim Bloch.

And that, ladies and gentlemen, is the sort of activity that tripped the burglar alarm. You remember Mr. Bloch saying he was on the telephone with the guy in California who was then running the company, and the guy said, "I see you sold some more of your stock," and he said he didn't. And then he called Mr. Hyman and asked him about it, and Mr. Hyman initially said, "That was a mistake. bookkeeper's error. Don't worry about it, it doesn't mean anything."

Mr. Bloch has had a business relationship with Mr. Hyman for a fair amount of time, and by this time he trusts him, and he says, "Fine, if that's what he says, that is fine."

Looking at it again, somewhere along the line some more of Mr. Bloch's stock wound up from Packer, Wilbur at another brokerage firm, A. J. Carno & Company, and we don't know when, couldn't locate a record that showed when the stock went to them, but we know it was at Packer, Wilbur and the next place it is found is at A. J. Carno. And A. J. Carno, in November of 1970, sends some of Mr. Bloch's stock to the First Jersey Bank to be transferred into other people's names, and some to the Irving Trust in New York

rb ja 5

to be transferred to other people's names, and this time the burglar alarm went off with a vengeance. The first time it can be a mistake, but when it happens again, even good old cooperative, friendly, trusting Mr. Bloch has to say to himself, "Something is wrong here," and he goes to Mr. Hyman and says, "What is this?"

They had a meeting in Mr. Bloch's office, and Mr. Hyman said, "Okay," and in effect I guess what he said was, "The jig is up, you got me." What he told him was, "We sold your stock, we used it."

He said, "Let's see what we can work out and maybe we can keep you happy and keep everything cool, work out a deal with you, pay you a dollar a share."

We know what Mr.Bloch ultimately thought of that deal. He didn't like it very much. You might figure that by the time that happened, enough had gone wrong and enough had happened -- you remember it was February by that time, and by February, in the middle of February, this firm went out of business.

So by that time, what are you going to do with Mr. Bloch's stock, this deal to pay him a dollar? "The hell with him, everythning is falling in on our heads anyway, tell Mr. Bloch to go to hell."

Along about the middle of December we find a whole

rb ja 6

bunch more of Leasepac stock wending its way out to Cleveland Ohio, to the Schreiber firm. You recall Mr. Schreiber got on the stand, and he was pretty vague in what he had to say, and you might figure that there is a reason that he was pretty vague. Remember, when this was going on it was 1970 and nothing suggests that Mr. Schreiber knew anything about the shenanigans that were going on, and so he wouldn't be able to remember things very clearly, but what Mr. Schreiber said of any significance was this: You remember Mr. Gallentine saying that it was Maurice Rind who set up these various transactions in Leasepac stock with Schreiber, Watson, and Mr. Gallentine, of course, a lot of people are going to tell youthis afternoon or tomorrow that Mr. Gallentine is terrible, you shouldn't believe him, et cetera.

But of all the people that he dealt with in Leasepac stock at Packer, Wilbur, the only name Mr. Schreiber could remember was that of Maurice Rind, and from that you might conclude that the guy that generally he dealt with was Maurice Rind, and from that you might conclude that Mr. Gallentine is telling the truth when he tells you who set up those transactions with Schreiber, Watson that led to forged stock certificates being delivered in interstate commerce from New York to Cleveland, Ohio.

rb ja 7

Then we came down to the end, the firm was out of business in the middle of February and sometime towards the end of February, as part of their cleanup, again referri to this chart, Packer, Wibur shipped what they had left, 26th of February, of Mr. Bloch's stock -- they shipped it to the Irving Trust Company to be transferred.

The Irving Trust Company reissued it in the name of various customers of Packer, Wilbur, Packer, Wilbur got it back in March and shipped it out to those customers that they could satisfy, leaving, of course, Mr. Bloch high and dry.

That is pretty much the story of what happened. So now we have gone through the why of it, the how does it work part of it, and the what happened part of it, and we are now into really the only part of this case that is of any great dispute, because there is no dispute in this case that a crime was committed, that the mailing that were supposed to be mailed were mailed, that the stock traveled to Cleveland and Chicago and back to New York and to New Jersey.

The reason dispute is, did Robert Berkson know about it, did Maurice Rind know about it, and did they take part in what was going on?

We have, ladies and gentlemen, sort of a problem.

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We have this guy Gallentine and, as I told you, he is an admitted criminal, he admitted that he took part in these illegal transactions, and all that. That is problem number one.

You might say that his credibility, because of the fact that he is the kind of guy that engaged in forgery and things like that, is a little weak, but that is only the beginning of the problem.

Mr. Gallentine has told at least three different stories about what was going on, and one of the interesting things about those three stories is this, ladies and gentlemen: From the first time he told the story in 1973 in the grand jury, right through until the witness stand here, he said basically the same thing each time about Mr. Rind:

"Yes, Mr. Rind set up these transactions and I told Mr. Rind this and told Mr. Rind that, and Mr. Rind told me what to do, told me to do it, and I did it." And he has been pretty consistent all along saying that Mr. Rind did this, that and the other thing. And there is some logic for you to conclude that indeed Mr. Rind was the one who did the things Mr. Gallentine said he did.

But now we come to this other guy, Robert Berkson, and I am sure youhave to be saying to yourselves,

rm ja 9

what about this? Gallentine testifies in the grand jury and says one thing, and some time goes by and in December of 1975 Gallentine signs an affidavit that says, in effect, that Robert Berkson doesn't know anything about anything, and then he comes up here and he says, "Well, yes, there is one occasion I told him about it, but that is all."

I am going to suggest to you, ladies and gentlemen, where Mr. Gallentine's head is at and what we should make of Mr. Gallentine. Mr. Gallentine had -- and I use the past tense of that word, but it doesn't really matter -- a deal with the Government, and his deal was if he came forward, actually having been caught, because all those kids who testified they did the actual signing were available to say, "Mr. Gallentine told me to do it, told me it was okay" -- but he knew, he was caught literally with his hand in the cookie jar, almost, and there was no way to get out of it.

What does he do? He is told, "Look, you tell what happened, you put it all together, you can explain it, testify toit, and instead of throwing the book at you, instead of charging you with every single crime we can think of to charge you with, we will make you plead guilty to one thing and that will be it, that will cover all the series of crimes you committed."

rm ja 10

You remember when he was on the witness stand he was a little surprised to find out he had committed more than one crime, he had forgotten he forged more than one name and did a whole lot of these things that were basically crudely illegal.

Mr. Gallentine decided, I guess, that wasn't a good enough deal for him and he will not go into the grand jury and testify and say what happened, and among the things he said happened was that, in essence, Mr. Rind, who was, after all, the salesman, set up the transactions, he, Mr. Gallentine, supplied the mechanical necessities of the transactions and, ladies and gentlemen, he told Mr. Berkson and Mr. Hyman about what was going on. Okay.

Then he has this affidavit that he signed, and you say to yourself, why the devil did he sign that affidavit?

Think about this, ladies and gentlemen -- I don't know exactly what you want to make of it -- Packer, Wilbur closed up, stopped doing business in February and in March, sometime in March they were shut down completely, and you remember Mr. Gallentine said he stayed on for a month or two months working with the trustee to straighten up the books, or what-have-you, and then basically, I guess, Mr. Gallentine was out of a job.

Although Mr. Gallentine was a very skilled man and experienced in the business, some of you might recall that in the middle of 1971 it was not exactly golden days on Wall Street, and maybe it was hard for Mr. Gallentine to get a job, maybe it wasn't, but in any event, he got a job. It didn't pay as much as the one he had, but paid him almost as much, and it was the same kind of job.

Guess who got the job for him? Robert Berkson, at A. J. Carno.

So, point number one, we have Jimmy Gallentine perhaps feeling a little grateful to Mr. Berkson for actually getting him this job, and then we have some really strange thing happen, because according to Mr. Gallentine's testimony here, we have Mr. Berkson recommending Gallentine to get the job from Mr. Carno, or whoever, and I forget the name of the original boss of that firm, but you remember eventually Mr. Berkson took over and became the head man at thatfirm, but sometime around 1973 when Mr. Gallentine learned of the investigation he decided to tell Mr. BErkson what had happened, he said.

I think, ladies and gentlemen, there is something funny about that. He said that he just told Mr. Berkson what happened, and that was all there was to it. I don't know if you want to believe that or not, but remember what

else he said, and you will recall that sometimes when I was asking Mr. Gallentine questions, I was getting kind of loud and perhaps being a little obnoxious toward him, and I don't think you should take any of into any particular account, and if it offended you, I apologize.

But just think of this one big thing: Mr. Gallentine would have you believe that he told Mr. Berkson all about this for the first time in 1973 while he was working for Mr. Berkson in a responsible capacity, and he would have you believe that Mr. Berkson said nothing at all -- nothing, not a word.

What do you conclude from that, assuming you believe him?

One conclusion you mig reasonably draw is that Mr. Berkson didn't say anything because Mr. Berkson didn't need to say anything, because Mr. Berkson wasn't learning anything he didn't already know.

Don't you think that if he had not known any of this that he would have expressed surprise, dismay, perhaps even righteous indignation, that this man had done this outrageous criminal act?

But what did he do? Nothing. He didn't say a word.

You know, there is a little statue thing, and I

guess where I got mine was at a Coney Island type of amusement park, and it is made up of three little monkeys, and one of them has his hands over his eyes, one has his hands over his ears, and the other one has his hands over his moguht, and it is "See no evil, hear no evil, speak no evil."

I don't know if that is supposed to be an admonition as to what is good to do in your life, but it occurred to me those three monkeys were kind of like the three people involved in this case that you have seen: Mr. Gallentine, Mr. Rind and Mr. Berkson. Everything is understood between them, nobody ever has to say anything.

You remember Mr. Gallentine said, "Well, he didn't actually tell me to forge it, he just told me to do what I have to do, and it was all understood becasue we were just rying to raise cash."

I guess we know this, that there was a lot of evil going on but it was very interesting, nobody wanted to talk about it, nobody wanted to hear about it, and nobody wanted to see it -- just like those three little monkeys.

Ladies and gentlemen, do you suppose that if you had an employee in a trusted position, in a business that you were responsible for and had a big inerest in and you found out for the first time that that guy in the

past had done what Mr. Gllentine did in this case, do you think you would keep him on?

Well, what happened? Mr. Berkson didn't even so much as suggest that Mr. Gellentine should better leave thatfirm because, "Hell, if you did it back there, get out of here." He didn't even suggest that.

Gallentine himself said, "Is it going to be a problem for me to stay here?" And you remember what he said again:

"What did Mr. Berkson say when you said that?"

"Well, nothing, really."

Well, maybe he did and maybe he didn't, but think about it. Supposing if you were honest and straight and y. found out about this, the likelihood is you would fire the guy on the spot. But supposing, to the contrary, you knew all along the guy was a crook, you knew he had done this stuff in the past because you benefited from it in the past, what you really have to worry about now is, is this guy going to be your friend? The last thing in the world you are going to do is fire him, because now there is an investigation going on and people are starting to ask questions, and you might just find and think that Mr. Berkson here figured that, "Well, I have Jimmy Gallentine with me now, and now I will stick with

him, because I don't want him to b[illegible]ad at me, that's for sure."

(Continued on next page)

So what do we have? We have Mr. Gallentine who comes in to the grand jury.

So then some time goes by and an indictment comes down and Mr. Berkson approaches his old friend, Jim Gallentine, and says, "How about signing this affidavit for me?"

Mr. Gallentine signs the affidavit, and it's kind of inconsistent for this grand jury testimony. He says, if you remember, he says, "Oh, jeez, when I signed the affidavit I didn't really remember what I said in the grand jury because it was like a year and a half later and I couldn't really remember it, so I just signed it, and whatever."

And then he says when he finally came in to the Government, he says, "You know, this grand jury testimony, it's a problem, it's not accurate, this part about Berkson is not accurate."

And do you remember when that happened? Right after he met with Mr. Berkson's attorney.

Now, before you get any ideas in your head, the last thing in the world I would ever suggest is that Mr. Berkson's attorney did anything wrong, and I mean that. Put that idea away from your mind completely. It is inconceivable that a man of Mr. Brodsky's character would

do anything like that. Inconceivable.

Look at the situation. Remember, before Mr. Gallentine went in to see Mr. Berkson's attorney he had a chance to read his grand jury testimony, and he didn't say anything to the Government about "Oh, there is something wrong." Because, you see, that's probably when he had another chance to read his grand jury testimony he forgot what was in the affidavit that he signed, because Mr. Gallentine, you might find, ladies and gentlemen, has a disease, amnesia, except for one thing. His amnesia is creative. He remember what he wants to remember when he wants to remember it, and when he doesn't want to remember he forgets. That's "creative amnesia."

It's sort of like what used to happen a couple of years ago with some people in Washington, in the Government. They would come out one day and make an announcement of something or other, X, and that would be the announcement; and then a couple of days would go by and somebody would come up and say, "Hey, a couple of days ago you said X, and, look, it's Y."

And these people in Washington would say, "Oh, yes, I guess so. Well, look the statement we made a couple of days ago about X, that statement is inoperative," sort of wipe it off the books.

ss3

That's what Mr. Gallentine was doing here, ladies and gentlemen.

So finally what happens is that shortly before this case is going to trial he goes to Mr. Berkson's attorney's office -- now this is not anything unusual; you have got to figure that lawyers who are trying the case are going to try to find out as much as they can about what the people who are going to be witnesses are going to say; they want to know what's going to happen, because that's how we stand up and make an opening statement, because we want to try to tell you what is going to be in evidence. We have to.

At this point we figure well, Mr. Gallentine now must remember about his affidavit; it's only a couple of weeks ago he read his grand jury testimony and he knows there's a problem. So the next time when he goes into the Government's office and says, "Read your grand jury testimony," and he reads it, and, oh, there's a problem. Oh dear, a real problem.

Now, what is his problem? His real problem is this: He has got a deal with the Government that really basically depends on him telling the truth. He has g[illegible] an affidavit that he gave his friend, Mr. Berkson, [illegible]'s contrary to what is in his grand jury testimony.

ss4

They both can't be the truth. What is he going to do? He has got to come up with an explanation.

And now he has a little creative remembering. After he has created amnesia, then he remembers again.

Now he is trying to have it both ways; he is playing both sides of the street.

"Well, what I said in the grand jury wasn't right because what I said in the grand jury was effectively I told Berkson everything that was going on, everything, every day that something happened, I would tell him what happened. And you might think that might make some sense, because, after all, the people who are running the business, you want them to know how hard you are working to help them out, how important you are to them, and how much you are doing to help them, even going so far as to commit crimes to help them. That makes sense if that is what he did.

But now he is stuck. He has to have some explanation for the grand jury testimony and he has to have some explanation for the affidavit.

So what does he do? Do you remember the old Bible story about Solomon, trying to decide when two mothers were arguing aout whose kid it was, and Solomon said, "Oh, we'll cut the kid in half and give each half."

What Mr. Gallentine was doing was cutting the baby in half. He doesn't want to hurt Mr. Berkson, his friend. But, on the other hand, he doesn't want somebody from the Government to come down and say, "Oh, you lied. You will be prosecuted for lying."

So he says, "I remember now, one time." I will give you a little with one hand and I will take it back with the other -- "One time there was a stock dividend for Leasepac stock, I went and told Mr. Berkson that there might be a problem with some of the customers not getting their dividend because we used their stock and it might have got transferred out of their names and they wouldn't get the dividend."

And he said -- first, "What did Mr. Berkson say?"

First he said nothing. Nobody says anything. Everything is a silent movie; it's almost like you need a caption underneath the pict re to understand what's going on.

Then he remembers, with a little push. With a little prod, he says, "Oh, yes, Berkson said he will talk to Rind about it, and he also said make sure we keep a record so we know who is supposed to get the dividend."

That sounds pretty good.

But that's it, ladies and gentlemen. That's what he wants you to believe. That's the only time.

And then his explanation for that great line in the grand jury, "Mr. Berkson was aware" - "Oh, I got mixed up, I got mixed up with the dates, because I was mixing up when I told him, because I'd had just told him for the first time in 1973 when the investigation started, and I mixed that up to back when we were doing business."

That's his explanation ultimately for his grand jury testimony and how it's really all the same.

Ladies and gentlemen, the explanation that Mr. Gallentine gave for that, how the grand jury testimony is really not such a big problem reminds me of a little story that a relative of mine who owns a delicatessen told me. In his delicatessen he sells baloney, he sells three different baloneys for three different prices, each one higher than the other. The first type of baloney he sells is just plain old baloney; it sits there in the cabinet; it has got a little plastic on it, and it's plain old baloney, and that cost 25 cents.

Then he's got another kind of baloney, and that's wrapped up in a sort of cutesy little burlap sack with cute markings on it, and he sells that for a little bit more. And then he's got another baloney that he sets out

in his case all wrapped up in silvery foil, it looks very impressive, and that one costs the highest.

Well, you know what he told me, ladies and gentlemen, about that? Inside the wrappers it is all the same baloney, and no matter how Mr. Gallentine dresses it up, covers it up or tries to explain, his explanation comes out baloney.

And I suggest to you that you can fine that when Mr. Gallentine got in the grand jury before he had even thought about it, before he had talked to Mr. Berkson, his buddy, about it, he told what really happened. And then after he began to talk to his friend about it he started telling different stories, trying to help his friend out. That's what you can find.

And on the basis of that you can quite properly find Mr. Rind and Mr. Berkson unlawfully, wilfully and knowingly participated in a scheme to rip off their customers, to steal from their customers their stock and use it for their own purposes to keep their business going when, instead, they should have been knocking on the Bankruptcy Court asking to be adjudicated abankrupt, and you can find based on that that they are, indeed, guilty of the crimes with which they are charged.

Thank you for your attention.

THE COURT: Well, I think it's probably better to give Mr. Brodsky a whole summation interrupted by an adjournment. He only has twenty minutes now. So rather than do that to him, we will suspend until tomorrow morning and we will start in at 10 o'clock tomorrow morning.

Please don't discuss this case amongst yourselves or with anyone else, and don't let anybody express any opinion to you until it is submitted to you.

We will adjourn until tomorrow at 10 o'clock.

(Adjourned to Tuesday, June 8, 1976, at 10.00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ephraim Bloch (Resumed)	298	309		
David Lipschutz	312	318		
Allan Salovin	320	327	339	
Robert Bader	340	341		
Patricia May	342	348	348	349
Martin Berkson	352	354		
David Soffler	368	369		

EXHIBIT INDEX

Government	Identification	In Evidence
5-F,	313	313
5-C		314
5-D		316
3-A		337
33,33-A,33-B		347
26-A,26-B	359	359
26		366
29		369
30,31,9-A		375

BRODSKY 12,8 - 19

UNITED STATES OF AMERICA

vs. 75 Cr. 608

ROBERT BERKSON and
MAURICE RIND.

New York, June 8, 1976;
10.00 o'clock a.m.

(Trial resumed.)

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(In the courtroom - jury present)

SUMMATION ON BEHALF OF DEFENDANT BERKSON.

MR. BRODSKY: If the Court please, Mr. Lowe, Mr. Anolik, Madam Forelady, ladies and gentlemen of the jury:

This will be my final opportunity in this case to speak to you, and it will be my purpose now to review the evidence in the case and to see what reasonable inferences we may draw from the evidence and what reasonable conclusions we may draw from the evidence.

But in order to talk about evidence we have got to talk about some kind of a standard which you are going to apply to the facts that you heard, and the standard -- and you have heard it a few times now, and I am sure that Judge Cannella will have more to say about it; it is not

my purpose to give you a speech about the law, but some basic rules are necessary, as I say, in order to put the evidence in context so that you know what kind of a standard you have got to apply - and the standard that we use in this and in every criminal case is the standard of guilt beyond a reasonable doubt.

And the Government has the burden of proving to your satisfaction that Mr. Berkson, the person whom I represent, is guilty beyond a reasonable doubt; and if they fail in that burden of proof, then it is your obligation to acquit.

Now, there is no mystery about what those words mean. A reasonable doubt means a doubt to which you can assign a reason. It means a doubt that might make you hesitate in the imporant affairs of your own life.

And, so, as I am talking this morning I am asking you to bear in mind the burden that the Government has. It is the highest burden in any kind of a case that we have in American jurisprudence. There is no higher burden. And the Government has that burden.

And as Mr. Bergson sits here before you now he sits here as an innocent man, and he remains innocent until such time, if that time ever does come, when you have heard all the evidence and you have listened to the

evidence and you have heard Judge Cannella tell you what the law is, and you have deliberated on the evidence, and only if the Government, after all of that, and after your deliberation, has satisfied you beyond a reasonable doubt of the guilt of Mr. Berkson, only then may you bring in a verdict of guilty. But until that time, as I say, he sits before you an innocent man.

Now, what is it that the Government has to prove to you in this case beyond a reasonable doubt?

Well, there are many elements in these crimes which are charged, and I am not going to go through them because they really serve no purpose in this case.

Basically, what this dispute is all about is not whether or not Mr. Gallentine committed a crime and not whether or not the employees who worked for Packer, Wilbur committed a crime, but two things.

One, did Mr. Berkson know what Mr. Gallentine was doing when he forged those securities? Did he know what the other employees were doing when they forged the securities?

And even that is not enough. Because the second question is, if he knew about it, did he do something, did he commit an act which would make him a participant in a crime? Because if a person simply knows that another

person is committing a crime and does not do anything about it, that is not a crime. But, on the other hand, if he participated, if he makes the crime something of his own, then he has committed a crime. And I suggest to you that the Government has failed -- and I am going to go through the evidence with you -- the Government has failed on both scores. It has failed to bring forth any evidence, certainly no evidence beyond a reasonable doubt that Mr. Berkson knew about these forgeries, about this unauthorized use of securities, and, certainly, beyond that, no evidence that he in any way did any act, perform any function, did anything whatsoever which would make him a participant in the crime.

Now first a few preliminary remarks before I can get into the evidence itself:

You know, it's a funny kind of case because Mr. Lowe has said to you when he summed up that the Government's chief witness, Mr. Gallentine, is full of baloney -- those are his words -- wrapped in a fancy package, and yet Mr. Lowe says that he has proved this case beyond a reasonable doubt.

He says that his chief witness, Mr. Gallentine, is guilty of this, what Mr. Lowe calls, creative amnesia, whatever that means, and yet he says that he has proved

his case beyond a reasonable doubt.

He says that Mr. Gallentine, his chief witness, is a liar, he committed perjury when he testified before you, and yet he says that he has proved his case beyond a reasonable doubt.

And you know what else is strange about this case? Normally if we use our common sense, when a lawyer like Mr. Lowe impeaches a witness, destroys his credibility, says that he is a liar and is guilty of creative amnesia and worse, usually he will then be able to say, "Ladies and gentlemen of the jury, don't believe that man because there is another man in this case who testified to the contrary and he didn't lie and he wasn't guilty of creative amnesia. Believe him."

Well, ladies and gentlemen of the jury, you see tha witness chair over there? It is empty. And there was no evidence ever, a witness who came to this courtroom and testified to the contrary to what Gallentine said.

So what Mr. Lowe has done is to destroy his chief witness and not bring on any other witness to testify to the contrary.

So what we have got in this case is a hole as big as an atom bomb crater that has never been filled. It is a big void. Because what did Mr. Lowe did? He

destroyed his own case without putting on the contrary case; without putting on one witness. Do you realize there wasn't one witness, of all the people who testified in this case, who said, "I know because I talked to Mr. Berkson about it, that he knew about the forgeries." There asn't one witness who said, "I know because I talked to Mr. Berkson about it that he knew about the unauthorized use of securities." And, Lord knows, there were plenty of people who were involved in that. There was Mr. Gallentine and Mr. Pugliese and all those other employees, who I will get to in some more detail in a few minutes, but nobody, and everybody said the contrary.

And you know what they said? "I never spoke to him about it. As far as I know he didn't know a thing about it." Every one.

So having destroyed his own case, not having put on any contrary case so he could say, "Ladies and gentlemen, disbelieve this man but believe" -- who? Who is it that you are going to believe in this case, that you are going to use to come to the conclusion that Mr. Berkson is guilty of this crime beyond a reasonable doubt? There isn't anybody.

Now, having said that, to put this into context, let me cover the evidence with you.

First and preliminarily, some background:

What is this company called Packer, Wilbur? Who are the people who ran it? What did they do? Because that's important for you to know in the context of deciding who in the company, if anybody, committed a crime.

(Continued on next page.)

Well, we have had evidence on that subject. First of all, Packer, Wilbur was a brokerage company, and Mr. Wilbur Hyman, you recall, who is not here, who fled to Spain--and, you know something, the indictment in this case was returned, I think it was sometime last year, in approximately June of 1975, and the facts in this case go back to 1969 and 1970. That is a long time ago, six years or so. It took the Government -- and if you recall, the grand jury investigation was sometime in 1973 and so with the facts happening in 1969 and 1970, the grand jury investigation is in 1973, and you know by that time the Government had whatever information it apparently was going to get about these activities, because Mr. Gallentine confess before the grand jury, he confessed his own activities, and then it took them approximately two years of that, rom June of 1973 until sometime in 1975, June or July, something like that, before the indictment was returned.

I am not saying this critically of the Government, but I do say this, you know, if they had acted swifter maybe he wouldn't have run off to Spain and maybe he could shed light on what went on here. But he is not here and that is unfortunate.

But we do know what he did. He was a certified public accountant, he was the principal shareholder of

Packer, Wilbur, he was the president of the company, he was a member of the board of directors. He ran the company.

You heard Gallentine testify about many conversations that he had with Mr. Hyman about some of these stocks, about they they were doing during the course of this period of time, 1969 and 1970.

So it was Mr. Hyman who was running the company, not Mr. Berkson. What did Mr. Berkson do? You remember the testimony. Mr. Berkson was what they call a customer's man. He had customers he talked to on the telephone in the course of the day, and he also was a trader in securities, made a market in certain securities, and that is how he spent his day.

He had nothing to do -- and I don't think there is a serious dispute about it or any dispute at all -- he had nothing to do with the books and records of Packer, Wilbur, had nothing to do with the stock certificates ever. It just wasn't part of his function.

He had nothing to do with any of the operations in connection with the back office of Packer, Wilbur, and he had no function in committing the crimes that were committed.

You know, people when they commit crimes, like Mr. Gallentine, Mr. Hyman, if you are in the process

of committing a crime, who do you tell about it?

You tell only those people who really you have to tell. I am sure Gallentine while he was doing this never went around Wall Street with a big sign on him saying, "I am forging securities at Packer, Wilbur." You don't do that.

Mr. Hyman and nobody else did that.

If we use our common sense, we say to ourselves, "Well, Mr. Gallentine would only tell those people who would really have a need to know, and if he is talking orders from Mr. Hyman or somebody else, those people wouldn't go around to the other employees of Packer, Wilbur and say, "Look what we are doing, we are forging customers' stock certificates." That wouldn't make any sense.

So the people who are committing crimes will keep that information pretty close to the vest, and why should anybody simply tell Mr. BErkson, who had no function in any of this? I mean, there has been no evidence anyplace, not here, not before the grand jury, when Mr. Gallentine testified before the grand jury, that Mr. Berkson had any function in committing these crimes.

What did he do? Nothing. Why would somebody go to a person who really has no participation in the illegal activity and say, "Hey, Mr. Berkson, we are forging

securities?"

You know, if we use our common sense, it just doesn't happen that way. They keep that kind of a thing in the family of people who have a need to know. You don't tell everybody in Packer, Wilbur, and there isn't a shred of evidence that anybody told Mr. Bekrson in this case.

Turning to another aspect of the case, after we get into the background, and of course, part of the background -- and I don't have to spend time on it -- is what Mr. Gallentine did. He was the cashier, had authority to sign checks and, as he testified, he was the person who physically handled the securities. He arranged to get them back and forth to the bank, and he was the person, as he testified, who forged securities himself and who told people at Packer, Wilbur, the employees who worked under him, who did his bidding, to forge securities. That was part of wht Mr. Gallentine did and his function there -- you see, as I said before, the people who will know about the crime are the people who necessarily had to take part in the crime.

Since Mr. Gallentine was the person who had control of the securities, it would be difficult to commit this crime without Mr. Gallentine.

So Mr. Gallentine had to know about it. He

He participated in it.

But what did Mr. Berkson have to know about that? What did Mr. Berkson have to do about that? I suggest to you that the answer is absolutely nothing.

Let me turn now to another aspect of the case which is the evidence that you heard, and there was quite a bit of it, that in 1970 and 1971 Packer, Wilbur was in bad financial straits. There isn't any question about that. Anybody could look at a Packer, Wilbur balance sheet and see that. Anybody can look at a Packer, Wilbur bank statement and see that.

If you remember, in my opening statement I told yo you that there would be no dispute in this case about the poor financial condition of Packer, Wilbur. The Government was permitted to bring on testimony about the poor financial condition of Packer, Wilbur and evidence which I will get to in a few minutes, that check went back and forth from Gallentine to the company, and there was also in evidence these exhibits, 36 and 37, which are the bank statements of Packer, Wilbur during part of this period which show that Packer, Wilbur was, most often, in debt, they were overdrawn at the bank. There was an awful lot of evidence in this case about that.

And what are you going to do with it? How

are you going to consider it, for what purpose? It isn't a crime to be poor and it isn't a crime to be bankrupt, and Mr. Lowe doesn't contend that all of this evidence which came in on this subject is evidence of any crime, and it isn't, and I think that Judge Cannella will tell you at the proper time that all of this evidence about the overdrafts and ab out the checks going back and forth, it is not evidence of any criminal activity. It is evidence of the fact that Packer, Wilbur needed money and, therefore, the principals of Packer, Wilbur had a motivation to get money from some source.

If I can use an anology, and it is not different than this: If a person is poor and he can't feed his wife and children, and he has no job and no money, he is motivated to go to the local supermarket and steal some food, but the fact that he is poor and he has no money to feed his family is no evidence that he did in deed go to the supermarket and steal any food. It is no evidence of that whatsoever. It simply shows that he needs money.

You can't, and Judge Cannella will tell you that you shouldn't, infer from that fact that any crime in this case was committed.

With evidence of motive coming into the case just for that reason and with really no evidence of any

criminal activity, what was done here in this case? The bank statements come in and Mr. Lowe cross-examines Gallentine:

"Isn't it true that every day in August or most every day in August there was an overdraft?"

That is as if to say, "My God, what a terrible thing."

Then he brings on these checks that went back and forth from Mr. Gallentine -- here are the checks-- Mr. Gallentine writes checks to Packer, Wilbur and immediately later checks come back the other way, and the result is a wash, and we have this exhibit that goes into evidence to prove that, and we have all these checks here, and they come into evidence to prove what? That Packer, Wilbur is poor.

Then they call Pat May, the secretary who worked at Packer, Wilbur, for what? To prove again that Packer, Wilbur had no money, that she was asked, as she testified, by Mr. Hyman to write checks, and she wrote checks back, and here are the checks, and here is the schedule that shows all it was, was that she was writing checks to Packer, Wilbur, and Packer, Wilbur wrote checks back to her.

So, you know, no matter how many times you say it,

you want to say once Packer, Wilbur is poor; twice, they are poor; three times, Packer Wilbur is poor; four times, Packer Wilbur has no money, has no money -- what is the purpose of all of this?

Whether you say it once, whether I admit, whether you say it twice or three times or 28 times with 50 exhibits and a hundred checks up to the sky, it proves one thing and one thing only, and we spent an awful lot of time here on cross-examination, and with witnesses and exhibits to prove that Packer, Wilbur had no money.

Well, Packer, Wilbur had no money, and that is no crime, and that is all that evidence shows. So we can really take it away.

In your deliberations, when you consider this evidence, you consider the fact that Packer, Wilbur was poor and like anybody else who was poor, they wanted money. How many of you havebeen short of cash anytime in your life, and as a result of that how many times have any of you forged a check or stolen money because you needed cash?

I venture to say that nobody has ever done that. I also venture to say that all of this evidence that cime in on the question of whether or not Packer, Wilbur is poor is coming in because it comes in the way it was put in as if

there is something sinister about it, and there is nothing sinister about owing people money and needing money, and it is no evidence of any crime.

Let me turn now to Mr. Gallentine. In order to talk intelligently about Mr. Gallentine, in order to determine what motivates him to say what he did, why he said what he did, why he said different things on different occasions, it is important to understand what was going on in his mind, what he was thinking about in the course of this investigation, and in the course of time when he was making these statements to the Government and elsewhere, and you have to bear in mind that Mr. Gallentine wasn't answering questions put to him by the Government just like a man on the street who walked in and they wanted to know some facts, and he left, and that was all there was to it, but the Government had caught Mr. Gallentine red-handed with those forged securities, he knew it, and they knew it.

They said to him, "Look, Gallentine, we have you cold. There are many different crimes that you committed. Now, look, why don't we make a deal? The deal is, you cooperate with us, you sit with us and tell us what happened here, and if you do cooperate, we will let you plead guilty to one count, even thos God knows how many crimes you are

guilty of, and we will make known to the sentencing judge your cooperation and, in addition, we will let you plead guilty to the least offense in the sense of jail term" -- you heard the testimony that he was permitted to plead guilty to one count of thos ten-count indictment, and that one count carries a maximum jail sentence of two years, while every other count in the indictment carries a maximum sentence of five years.

Well, you know, for a man in Mr. Gallentine's position, this is pretty heady stuff. I am not being critical of the Government and suggesting that they did anything improper here. It isn't a question of whether they did something improper, it is a question of how do you look at Gallentine, how do you assess what he has been doing here, how do you assess his testimony, and don't you have to think that one of the things that he was really desperately trying to do in order to fulfill his part of the bargain to cooperate with the Government was to try to the best that he could to do just that, to cooperate with the Government, to give the Government what it wasnts so that when it came judgment day for him, the Government's part of the deal would be fulfilled, and he would get a very substantial break when it came to sentencing.

Mind you, they hold this over his head all the

rm ja 11

time that they are talking to him, because he testified, as I said, before the grand jury in 1973, and he wasn't indicted for two years, sometime in 1975; he pleaded guilty in something like April of this year, and he still has not been sentenced.

So as he comes to court and he testifies, he know s that whatever he is going to do is going to be known -- as Judge Cannella said, he is going to be the sentencing judge, and he knows whatever he is going to do is going to be known to the sentencing judge, and he has not yet been sentenced, and the sentence was postponed, as you heard, at the request of the Government.

MR. LOWE: I will object to that, and that is not the fact, and Mr. Brodsky knows that.

THE COURT: Well, it was something about the probation people. That is part of the Government, too, the probation period -- I think they are, we are paying them.

MR. BRODSKY: Forget it, ladies and gentlemen. It is not that important.

And if the sentencing was not put over at the request of the Government, just forget it, because it doesn't make much of a difference.

He has not been sentenced, that is the point,

rm ja 12

and as he testifies he knows he has not yet been sentenced, and what is his motivation?

I dopnt accuse the Government of acting improperly in that regard, but doing what they do, they create in a witness the strongest kind of motivation to color, to cooperate, to bend, to say to the Government, "Yes, this person did this thing, yes, this person did that thing," because their liberty is at stake.

(Continued on next page)

And can you imagine the pressure brought to bear on a man like Gallentine, a man with a wife and four children, who has got no money and no job, apparently, now - can you imagine the pressures brought to bear on him because he knows that he is going to be sentenced, and he knows that the United States Attorney wants certain testimony from him.

Well, all right, that's Gallentine's state of mind in that regard. And when we areconsidering what he said I would ask you to bear that in mind.

Now, the Government asks you to bear something else in mind, and Mr. Lowe says, after Packer, Wilbur folded, where did Mr. Gallentine go? He went to work for A. J. Carno; and Mr. Berkson was instrumental in getting him his job. Then he worked for A. J. Carno during 1973 after he quit Packer, Wilbur, during 1974. A. J. Carno also had financial trouble, they went out of business, and Gallentine continued to do some clean up work, and from those facts Mr. Lowe asks you to draw the conclusion that Mr. Gallentine was lying to help Mr. Berkson.

Now, let's examine that for a minute:

Mr. Gallentine worked at A. J. Carno; he worked as a cashier, and he got paid less money than he got paid

at Packer, Wilbur; and there is no dispute about that, that he worked there, and he worked on a full-time basis.

And starting in 1974 when the business of A. J. Carno had fallen down, Mr. Gallentine had less and less work to do.

Now, mind you, we are coming closer and closer to the trial in this case. Mr. Gallentine had less and less work to do, and what happened, he got paid less and less and less, and the closer he got to the job the less money he got.

Listen to these numbers. Page 153 of the record -- and there is no dispute about this -- page 153:

"Q Mr. Gallentine, I was asking you some questions about your compensation at A. J. Carno. Now do you recall after December 1974 how much you were making before December 1974?

"A $275 a week.

"Q Now, after December 1974 that amount was decreased, was it not?

"A Yes.

"Q After that time you got paid on the basis of the amount of time, more or less, that you would work at A. J. Carno, is that correct?

ss3

"A Yes.

"Q As the work dwindled down your compensation dwindled down, did it not?

"A Yes.

"Q So that as time went on and there was less work to do you got less money from A J. Carno?

"A Yes.

"Q Can you give the jury some idea of how you were paid after December 1974 and on what basis?

"A Maybe $50 a week.

"Q And that wasn't a steady kind of thing, was it?

"A No, it wasn't.

"Q Now, all of the money that you got as salary ffom A. J. Carno was in the form of checks from A. J. Carno to your order, isn't that correct?

"A Yes."

Now, what kind of a bribe to a prospective witness is it when you are paid by check, when your compensation gets less as you come to the day of reckoning, which is the day of trial? And was Gallentine motivated to lie for Mr. Berkson, to take the risk not only of the trouble that he is already in, but to take the risk of a perjury indictment as a result of the testimony in

this trial? Because, you remember when Mr. Gallentine was testifying, one of the things that Mr. Lowe said to him was:

"Mr. Gallentine, are you aware of the fact that you are under oath, and if you lie you might be indicted for perjury?"

Do you remember that?

Now, do you think that Mr. Gallentine, in his position, is going to lie and change his testimony and get himself into that kind of trouble and risk a claim by the United States Attorney that Mr. Gallentine hasn't lived up to his deal to cooperate because he was getting $50 by check from A. J. Carno every once in a while when he performed services for A. J. Carno?

And there is something else about his work at A. J. Carno which I would ask you to bear in mind:

Do you remember yesterday when Mr. Lowe was summing up he told you a story about the three monkeys, they hear no evil, see no evil, speak no evil?

Well, there are three other monkeys in this case that he didn't tell you about, and they are the Securities and Exchange Commission, the National Association of Securities Dealers, the NASD, and Mr. Lowe and the United States Attorney's office.

ss5

Now, why do I say that?

The SEC is empowered to supervise these brokerage companies, and it does. The NASD - the National Association of Securities Dealers - is empowered to supervise these brokerage companies, band we had a witness, Mr. Pilpel, who testified he was from the NASD, and that he worked at the NASD by way of supervison of brokerage companies.

And, certainly, Mr. Lowe an' the United States Attorney's office and the Department of Justice of the United States, they also have a function in ferreting out wrongdoing by these brokerage companies.

Now, as of 1973 when Mr. Gallentine came in to see Mr. Lowe and confessed these crimes, and he testified before the grand jury, and he confessed these crimes, Mr. Lowe knew about it; the United States Attorney's office and the Department of justice knew about it. The Securities and Exchange Commission knew about it, and the National Association of Securities Dealers knew about it. They knew that a man who had committed these crimes at Packer, Wilbur was now working as a cashier with the same function at another brokerate company, A. J. Carno.

And what did they do about it? You can be sure that they took a close look at it. They did

ss6

nothing. They took no steps to get Mr. Gallentine out of there.

And, you know, they made a pretty good bet; because all the time that Mr. Gallenetine was working for A. J. Carno he never forged a certificate, he never made any unauthorized use of customers' securities; he never did any of those things while he worked at A. J. Carno. And if all of these Government law enforcement agencies are quite satisfied to let Mr. Gallentine work where he was working - and they have the power with this kind of evidence, as you can imagine, to get him out of any brokerage company in this country, instantaneously - and they didn't exercise that power; and why should Berkson do that?

And when Mr. Lowe said to you yesterday when in 1973 Gallentine told Mr. Berkson about the investigation, he says that Mr. Berkson said nothing.

Well, it is not quite accurate. The record is a little different, and let me see if I can find it.

At page 201 of the record, talking about this conversation in 1973, to Mr. Gallentine:

"Q And it was you asked him whether it would be a problem for you to continue working at Carno?

"A I believe I asked him, yes.

ss7

"Q What did he tell you about that?

"A He just said he would see about it, that's all, because at that time we had" --

And let me see what goes on here.

Question by Mr. Lowe -- he cuts him off in the middle of a sentence, and he says:

"Don't tell me because; just tell me what he said, if anything?

"A I don't recall what he said."

Now, I am not criticizing Mr. Lowe for cutting off Mr. Gallentine in the middle of his answer that way, but what I am suggesting to you is that when he cuts him off that way and we don't get the answer, we don't have it. What I do say is that you can't then criticize the same answer that you just cut off, and that's what Mr. Lowe did yesterday. That's what I'm saying. Because maybe Mr. Gallentine -- I don't know what he would have said -- maybe he would have said, "Because, look, I was down at the SEC and the said no problem, or I was down at the NASD, and they said there was no problem, and Mr. Lowe, he knows all about it, and he said no problem.

There was just no problem with all of these Government agencies, and why should he be worried it? I don't know what he would have said. But you can't

ss8

properly draw the inference of nothing, hear no evil, see no evil, speak no evil that Mr. Lowe talked about yesterday; it just isn't in this record whatsoever.

And there is one other fact about this, which is that not only did Mr. Gallentine during this period of time work at A. J. Carno, but he also worked at a company called Sherwood Securities, a company that Mr. Berkson had nothing to do with. He was a cashier at Sherwood Securities, and, again, obviously with the knowledge of the law enforcement agencies. They didn't have any problems with him.

And there was one other interesting fact about Mr. Berkson and Mr. Gallentine working together at A. J. Carno.

When Mr. Gallentine worked at Packer, Wilbur there isn't any question about the fact that he was a cashier who forged securities. No doubt about it.

He went over to A. J. Carno, and A. J. Carno also had financial troubles, and they had financial troubles before this investigation was known to Mr. Gallentine. They had financial troubles, according to the testimony -- and I will get it for you. At page 193 of the record Gallentine gives an answer and says, as far as problems at A. J. Carno, financial difficulties:

ss9

"I believe December of 1972 and January of 1973."

Remember, the first time that Gallentine knew there was an investigation going on in this case, as he puts it, was about two or three months before June of 1973.

So in December of 1972 and January of 1973 he didn't know about any investigation. Mr. Berkson didn't know about any investigation; and, mind you, Gallentine, he knew that at Packer, Wilbur he had forged the securities, and as of that time he hadn't been caught. Nobody has said anything to him about it as far as law enforcement is concerned.

Now, what do you think a man in that position would do, particularly if he had another man with him named Berkson who participated in that crime? They committed one beaut of a crime back at Packer, Wilbur, and they hadn't been caught. This is some easy way to make money. You take a customer's securities, you sign it, you send it to a bank, and you get your cash. That's a terrific no-loss business, and they hadn't been caught.

Don't you think that if Mr. Berkson knew about it at Packer, Wilbur, that he and Gallentine, when they had a cash shortage at A. J. Carno, before any investiga-

ss10

tion had started, would do the same thing over again? Why not?

And did they? They did not.

And I suggest to you that they didn't because Bergson never knew about it at Packer, Wilbur, and when a company that he was involved with, A. J. Carno, was having financial difficulty in 1972 and 1973, no customer's security was ever used in an unauthorized way; no customer's security was ever forged, and that is very powerful evidence of what Mr. Berkson knew and participated in when he was at Packer, Wilbur.

Now returning to Gallentine:

I would like to trace with you as briefly as I can do it Mr. Gallentine's statements from the time that he first understood that there was an investigation underway until the time that he testified in this case.

First of all, he was called into the United States Attorney's two or three months before June of 1973 before he appeared before the grand jury. And you remember yesterday in his summation Mr. Lowe said that the first time that Gallentine had ever said to the United States Attorney that Berkson was Not aware of these forgeries was a day after I had seen Mr. Gallentine in his lawyer's office some time in April of this year.

Well, consider that fact for a minute and let's look at what the testimony actually is, because Mr. Lowe is inaccurate about that. The fact of the matter is -- and I am going to read this to you in a second -- the first time that Mr. Gallentine appeared in the United States Attorney's office in 1973 he said to Mr. Lowe or to Mr. Soffler:

"Berkson had nothing to do with it as far as I know; I never spoke to him about it."

And here is the testimony, at page 141, of Mr. Gallentine:

"Q Now before you appeared before the grand jury about how many times did you visit with Mr. Lowe?

"A Many times.

"Q Well, can you give me your best recollection of how many?

"A I would say over 15.

"Q And all of those visits were in Mr. Lowe's office, were they?

"A Yes.

"Q Over what period of time did they extend?

"A Two or three months.

"Q Now, when you first came in to see Mr.

Lowe and he asked you, at least to your knowledge, what Berkson knew about these forgeries and unauthorized use of customers' certificate, you told him that as far as you know Mr. Berkson knew nothing about it; isn't that correct?

"A Yes.

"Q And did you tell him that on each occasion when he asked you before you appeared before the grand jury?

"A Yes, that's right."

(Continued on next page.)

So the evidence is clear from Mr. Gallentine, and there is no contrary evidence, from the first time in 1973 when he walked into Mr. Lowe's office he said, "Look, Mr. Lowe, Mr. Berkson doesn't know anything about this, as far as I know. I never talked to him about it, and he never talked to me about it."

He said he saw Mr. Lowe about fifteen times on those occasions, and he said he saw Mr. Lowe and Mr. Soffler together. Mr. Soffler was a witness in this case, and Mr. Soffler was not asked by Mr. Lowe whether or not Mr. Gallentine did indeed deny that he had spoken to Mr. Berkson about these forgeries at any time before he appeared before the grand jury. So the only evidence you have before you on the question of what Mr. Gallentine was saying to Mr. Lowe, right from the beginning, is Mr. Gallentine testified that that right from the beginning he told Mr. Lowe that Berkson didn't know anything about it.

Mr. Gallentine then appeared before the grand jury in June of 1975, and again for you to assess where the truth lies in this case, you really should understand the context in which people are testifying.

You have heard some testimony about what a grand jury is, and when Mr. Gallentine appeared before the grand jury, he was there alone, without a lawyer of his

own; Mr. Lowe was there, representing the Government, and there are some twenty grand jurors and a court stenographer.

Now, in the context of that setting, nobody was representing Mr. Berkson. In the context of that setting, where Mr. Gallentine knows, "He has the goods on me, he wants me to cooperate with him, he wants me to give him evidence about people, because evidence that I committed a crime doesn't mean anything any more, he knows that, knows that from all the employees, and if I am going to cooperate, I have to give him something."

And what does he say? He says in the grand jury -- not at this trial -- he says in the grand jury Mr. Berkson was aware, whatever that means, and there is no cross-examination in the grand jury to find out precisely what Mr. Gallentine is talking about, nobody there to protect Mr. Berkson's interests, and in that context you get some testimony, some conclusory testimony from Mr. Gallentine, with some questions asked by Mr. Lowe, which elicits "Yes" answers:

"Did you talk to him about the cash?"

"Yes."

"Did you do this?"

"Yes."

"Did you do that?"

"Yes."

A man in that kind of position, who must have been scared to death, is it understandable that in that context he would give this kind of testimony and, you know, there is something very significant about the grand jury testimony: Even after fifteen visits in the United States Attorney's Office, do you know that Mr. Lowe never said to Mr. Gallentine before the grand jury:

"Mr. Gallentine, did you tell Mr. Berkson about the forged securities?"

Now, we all speak the English language, and we all know that that grand jury investigation involved Mr. BErkson and Mr. Hyman and Mr. Rind and others, maybe, I don't know -- but why wouldn't the sophisticated prosecutor like Mr. Lowe say to Mr. Gallentine in the grand jury in plain English: "Hey, Mr. Gallentine, didn't you speak to Mr. Berkson about these forgeries?"

Never asked the question. Didn't forget, he didn't ask the question because he knew the answer would be, "No," and if there ever was going to be a trial of Mr. Berkson, with his lawyer present, with a judge present -- there is no judge in the grand jury to rule on evidentiary questions and other questions -- that that statement, "No, I never spoke to Mr. Berkson about these forgeries," would be

available to a lawyer for Mr. Berkson.

I don't say this critically, but Mr. Lowe is an advocate, he represents the Government as I represent Mr. Berkson, and he doesn't represent Mr. Berkson, and whatever I say here I am not saying critically about Mr. Lowe whatsoever. He has a job to do. But in the doing of his job when he does things which should be brought to your attention because they bear on the credibility of witnesses, I bring them to your attention only for that purpose, not to criticize Mr. Lowe.

So right from the beginning, Mr. Gallentine is saying to the United States Attorney, "Berkson knew nothing."

We come then, and I will do this chronologically because aftpr the grand jury appearance the next written statement that we have or statement under oath from Mr. Gallentine is in this affidavit which you recall I read to you in the course of the trial.

In December of 1975 -- let's see if we can put this affidavit in the context of what is Gallentine thinking about. December of 1975, A. J. Carno is out of business, Gallentine is getting once in a while, when he works, cleaning up some old transactions, some old trades, once in a while when he works he is getting $50 in a check

for services rendered from A. J. Carno, and he also knows, because by this time the indictment has been returned against Mr. Berkson and against him, although he has not pleaded guilty yet, that he has a deal with the Government, he is supposed to be cooperating with the Government and he has ever motivation to cooperate with the Government, as I have said, and he signs this affidavit; and, as he testified, he reads it carefully before he signs it, and he initials every page, and this is available to you, it is an exhibit, if you want to look at it in the course of your deliberations.

What does he say in December of 1975? I am not going to read the whole thing. I read it to you once and you can read it again if you like. But let me read just a few sentences from it:

"Robert Berkson never told me in words or substance to deliver any stock with forged stock transfer powers or forged signatures to anyone. I have no knowledge that Robert Berkson participated in any plan to sell securities owned by customers of Packer, Wilbur and use the proceeds for the benefit of Packer, Wilbur or for the benefit of Packer, Wilbur rather than for the benefit of the customers."

"I have never had any conversation with Robert

Berkson in which we discussed selling customers' securities for the benefit of Packer, Wilbur. I never had any discussion with Robert Berkson in which we discussed selling customers' securities illegally for the benefit of Packer, Wilbur. I never told Robert Berkson that I had told employee of Packer, Wilbur to forge customers' signatures on stock transfer powers and guaranteed the validity of forged signatures on stock powers to persons who purchased the stock from Packer, Wilbur.

"I have no knowledge that Robert Berkson ever participated in a plan to pledge any customers' securities for the account of Packer, Wilbur and use the proceeds of said pledge for the benefit of Packer, Wilbur or the principals of Packer, Wilbur."

After he signs that affidavit, he is called back to the United States Attorney's Office because they are getting ready for trial, and he is asked by Mr. Lowe about this transaction, and as Mr. Lowe acknowledges, at that time Mr. Gallentine says, "Mr. Berkson never knew about anything."

Then, chronologically, the next thing that happens is that Mr. Gallentine is called as a witness in this case and he testifies here on direct examination that Mr. Berkson didn't know anything about any of these forged

securities and unauthorized use of securities.

So Mr. Lowe tries to impach him through the use of the grand jury testimony that I have already talked about, and Mr. Gallentine explains the grand jury testimony and his explanation is important, and I would like to read it to you. These are questions asked by Judge Cannella:

"The Court: How do you explain the fact that here you say you never spoke to Berkson except that one time?

"The Witness: I really can't explain that situation other than I was trying -- trying to be helpful with Mr. Lowe and having worked with him, going back and reconstructing or going over the mechanics of these transactions, I formulated in my mind what may have happened, but that is not exactly the way it did happen.

"I thought we were getting into that yesterday of just exactly what or how we were operating. We were trying to stay in business, we had these trades made with different brokers, it was more or less a general understanding with Mr. Hyman and Mr. Rind; Mr. Rind because he was doing the Leasepac, he had the Leasepac stock; Mr. Hyman because he brought in Mr. Block's Robotguard stock. After that there was never any serious discussion as to

what was done or what wasn't done.

"These trades came through, I went ahead and did what was necessary in order to make delivery and get the cash that we needed for the day."

You remember I talked a few minutes ago about when people commit crimes, the need to know and the fact that people don't broadcast these things to people who don't have any connection with the -- you see, the only securities that were forged at Packer, Wilbur, although obviously they had other securities in the box -- you remember what the box was -- the only securities that were forged were the Leasepac and the Robotguard, and you recall that Mr. Hyman brought in the Robotguard stock and, as Mr. Gallentine testified, it was somebody else, Mr. Rind, who had to do with the Leasepac stock, but, you see, Mr. Berkson had nothing to do with making a market in the Leasepac stock or the National Stock Exchange where the Robotguard stock was traded. So having nothing to do with those securities as such, that is further evidence of the fact that he wouldn't be a person who would know what was going on in connection with these two securities.

Mr. Gallentine also said in attempting to explain his grand jury testimony, at page 150 of the record:

"Q When you appeared before the grand jury in 1973 and you said that Mr. Berkson was aware, were you confusing the time that you made him aware and thinking in terms of 1973 rather than the time that the forgeries were going on?"

You remember Mr. Gallentine did testify that sometime in 1973 when the investigation started, he told Mr. Berkson about it:

"Yes. That is what I just explained. This is what I meant just previously when I said I was confusing the time period."

There was also one other conversation which I will refer to briefly and which is, if you remember, in connection with these dividends that were being paid. You remember the testimony about circumstances that happened in all brokerage firms when customers failed to receive a dividend because, for example, the brokerage firm has filed to receive the stock from another broker.

You remember Mr. Gallentine testified that was a common problem in the brokerage business, and he did testify that he had a conversation with Mr. Berkson about stock dividends, and this is what he said in his direct examination, page 94:

"Q Government's Exhibit 27 in evidence, the letter forwarding the stock dividend in Leasepac to

Packer, Wilbur is dated September 11, 1970. Is that at or about the date you received this stock dividend?

"A Yes.

"Q At about that time did you have a conversation with Mr. Berkson regarding the stock dividend?

"A Yes. Sometime after that, I informed him that we had received -- the dividend had been received, there would be a number of customers that would not receive the dividend directly, but they were not stockholders of record as we had not had this stock in their name.

"Q Did you tell him anything else at that time?

"A No.

"Q Did you tell him anything about why the stockholders were not stockholders of record?

"A No, only that -- I didn't mention anything -- only that they were not stockholders of record, which is a common practice."

That concludes, for the moment, my remarks about Mr. Gallentine, who is the chief Government witness, and I want to go on now as briefly as I can to discuss the balance of the testimony.

There were other employees at Packer, Wilbur who worked under Mr. Gallentine who forged customers' securities at the request of Mr. Gallentine, as they testified.

There was Linda Sussman, Loretta Ottinger, Gene Pugliese, and Anthony Salamone. All of them testified that they forged customers' securities at the request of Mr. Gallentine.

As far as Mr. Berkson is concerned, their testimony is very significant because every one of them testified that Mr. Berkson never asked them to forge anybody's name to any security, and they testified that they never spoke to Mr. Berkson about these forged securities, and why should they, if he had nothing to do with it?

I made some notes, which I will refer to quickly, about these employees.

Linda Sussman, she testified at page 4 of the record that Berkson never asked her to sign any certificates.

Loretta Ottinger; Berkson never asked her to sign anyone's name, and he was not present when she was signing names.

Eugene Pugliese; Berkson never asked him to sign names and he never told Berkson that he was signing names.

Anthony Salamone; Berkson never told him to sign and he never told Berkson he did sign these names.

So when you get all these people together, these employees and Gallentine and every one of them say, "I never

spoke to Berkson about it," has the Government proved any case at all?

But that is not all there is to this case, because the Government also produced many customers of Packer, Wilber, and they brought them here from Ohio and Maine and Florida and New York and, again, for what? What do they prove as far as Mr. Berkson is concerned?

Almost every one of them didn't even know Mr. Berkson, because there were other brokers at Packer, Wilbur they dealt with. Some of them dealt with a broker in Ohio.

They testified they were shown these securities and they testified that particular signatures were not their signatures, but none of them were able to shed any light on whether or not Mr. Berkson knew about these forgeries. They don't know who put these signatures on the stock certificates.

But there is one customer, Mr. Caplan, whose testimony perhaps is a little more significant than the others to show again that Mr. Berkson didn't know anything about what was going in.

You remember Mr. Caplan testified that Mr. Berkson was his customer's man, his broker. Mr. Berkson had discretionary power over his account: and

what that means, as he testified, is that Mr. Berkson could buy or sell securities for his account without even calling him. Mr. Caplan was relying solely on Mr. Berkson's judgment.

Having that kind of power, if you need money it is a cinch, you have discretion over somebody's account, sell the securities and keep the money, the man will never know, because the securities are thereat Packer, Wilbur, he is not calling him to say, "Sell this, buy this, what is this, what is that?" He is relying on Mr. Berkson.

So if you have a motive and you need money, sell out his account, keep the money, and worry about it some other time.

Instead, what does Mr. Berkson do? On October 13, 1970, Mr. Caplan testified, Mr. Berkson, without any call from Mr. Caplan, sold 100 shares of Leasepac for Mr. Caplan's account and sent him the money.

Now, if indeed in October of 1970 Mr. Berkson was participating in this fraud, when they were selling out these Leasepac securities for their own account and keeping the money and sending Leasepac securities to banks and getting quick credit, do you think that Mr. Berkson, on his own, no customer asked him to do this, on his own, would sell Leasepac securities from Mr. Caplan, using his

discretion, and send Mr. Kaplan the money?

It is absolutely inconsistent with what Gallentine was doing at the time, completely inconsistent. Mr. Berkson could have sold the securities easily with Mr. Caplan never knowing about it because of the discretion and kept the money, and he didn't, and that inconsistent act of Mr. Berkson speaks loudly about whether or not he knew that this fraud was going on.

Let me say a word, and I don't think I will be much longer, about Mr. Bloch, if I may. I want to get these charts here for a minute.

Excuse me for a minute.

(Pause)

MR. BRODSKY: It is not that important that you see every word on these charts. I am only going to use it briefly.

The Government prepared this whole fancy chart about Ephraim Bloch, about where his stock went, and it comes here, 27540 shares, goes to First Philadelphia, Katz, Sterling -- I won't get into the details of that. I don't know why the Government finds it necessary to prepare a chart, but they did, because there is no dispute, and never was, that those securities went pretty much where the chart says they went.

But there is something very significant about Mr. Bloch's testimony. You remember Mr. Gallentine said as far as Mr. Bloch's Robotguard shares were concerned, Mr. Hyman said to Mr. Gallentine, "These shares are coming into Packer, Wilbur, and we are authorized to use them for Packer, Wilbur, so thatwe can do what we want with them. That is what Gallentine said. If that is true, if they were authorized to use these securities, then all of this is meaningless (indicating).

Mr. Bloch has a different version, and let's examine quickly Mr. Bloch's version of those facts. Mr. Bloch says, and bear in mind that all of this testimony -- Mr. Bloch teestified he never, ever mentioned Mr. Berkson's name, he never said he had a conversation with Mr. Berkson, he never said Mr. Berkson participated in any way in this.

He testified he had conversations with Mr. Hyman, who he dealt with, for the most part,and he had, I think, one conversation with Mr. Rind, but he never ever talked to Mr. Berkson about this.

Mr. Bloch claims that Mr. Hyman called him and said Mr. Bloch was selling his shares on the market, hurting the market on Robotguard, and therefore Mr. Bloch should send his shares to Packer, Wilbur so that

Mr. Hyman would be sure that Mr. Bloch wouldn't sell his shares in the open market.

Examine that statement for a minute and see whether or not there is a rink of truth to it. Mr. Bloch owned 27,500 shares of Robotguard and at the time it was selling, say, between three and four dollars, so that stock was worth about $100,000 more or less, and it was his stock, it wasn't Hyman's stock, and he was selling it.

Can you believe that if Mr. Hyman called Mr. Bloch and said, "Mr. Bloch, you are selling your own stock and you are really hurting the market in Robotguard, and we don't like that too much, and, as a matter of fact, we like it so little, why don't you send us the stock because we don't really trust you that even if you say you won't sell it, we don't trust you, and send us the stock and we will hold it for you, and then we can be sure that it won't be sold"? If any of you owned $100,000 worth of stock and it was yours, and you were free to do with it what you wanted, and your broker called you and said, "You are really hurting the market, and I don't trust you even if you told me you wouldn't sell it any more, so send me the stock," what would you say to him? You would say to him -- I don't want to use the words that come to my mind, because it is ridiculous.

And all this testimony about how worried these people were that they were selling stock in Robotguard, and they bring on Mr. Salovin and Mr. Salovin--the lawyer--and what does he say?

Mr. Berkson called him and he asked him whether or not his client, Mr. Bloch, was selling Robotguard stock, and he said that, you know, he thought he might, because he had given him an opinion letter, and at page 330 of the record, you know what Mr. Berkson said -- he got so excited, so angry, that Mr. Bloch might sell stock, you know what he said to Mr. Salovin? All he said was, "Okay," and he hung up the phone. That is how excited, how worried, how fearful, how concerned Mr. Berkson was about Mr. Bloch selling his own stock.

The final bit of evidence, ladies and gentlemen of the jury, I wnt to talk about is testimony from Mr. Berkson's father.

Mr. Lowe saw fit, for whatever reason he has, to call Mr. Berkson's father and have him testify as a witness in this case, and that testimony, if you had nothing else to go by, because that testimony is undisputed if you had nothing else to go by, that testimony would prove that Mr. Berkson is innocent beyond any shadow of any doubt.

Do you remember the transaction that Mr. Lowe asked Mr. Berkson's father about? It concerns some of this Bloch stock which is on this chart, some of the stock -- not some of it, but all of it, the 10,000 shares that went to R G. Berkson & Company.

Mr. Berkson's father testifies that sometime in August -- and I think he said the summer of 1970, he received a telephone call from his son and his son said, "Dad, would you help me out? Would you give me some assistance? Would you buy 10,000 shares of Robotguard stock? It is about $4, and it will help me and it will be about $40,000."

And his father, who is obviously in a position to do so, said, "Look, if you need the help, I will do it."

(Continued on next page)

Now, if Mr. Berkson was participating in this fraud or forged securities would he call his own father to try to sell him securities of Robotguard? And, you know, the securities were delivered to the bank, those over here, is an R. G. Berkson & Company transaction. I am holding them in my hand. These are securities that Bloch testified did not contain his signature. These are forged signatures of these securities.

So what the Government is suggesting in this case is that Mr. Berkson called his at that time 69 or 70-year old father and said, "Dad, would you buy some securities from me?" Knowing that the securities that he was going to sell to his father were phony. And why in the world would Bob Berkson do a thing like that? Gallentine and Hyman were sending these securities, these phony securities all over town and to different cities; they don't need Berkson's father to buy this stuff. This security was traded on the open market. They could have sold it on the open market; they could have delivered it to a bank, as they did in other cases, without any conversation from Bob Berkson to his father which the Government wants you to believe that Bob Berkson was going to stick his father with $40,000 of phony securities when there is

no reason in the world to do that because you can sell these securities any place that you want to.

And I suggest to you, ladies and gentlemen of the jury, if you didn't have another shred of evidence in this case, that based upon Mr. Berkson's father's testimony that would be sufficient to create a doubt in your mind, because that testimony is inconsistent; it is opposite; it does not jell with this fraud that the Government alleges in this case.

Now, ladies and gentlemen of the jury, I am almost finished. It is the last time I get to talk to you. Mr. Lowe gets another opportunity. I can't speak after Mr. Lowe speaks, and it is going to be up to you to decide, did the Government present any evidence which is sufficient for you to determine that Mr. Berkson knew about the forgeries and that he participated in some way to make this crime a part of what he was doing?

And I suggest to you that when you take away from this case all of the evidence that had nothing to do with Berkson you are left with a void. What the Government has done here is to build a bridge that went no place as far as Mr. Berkson is concerned, because if you take away Mr. Gallentine, who testified that Berkson had nothing to do with it; if you take away the employees

ss3

and Mr. Bloch and you consider Mr. Berkson's own father's own testimony, if you take away the evidence about motivation, the evidence that Packer, Wilbur was going bankrupt - if you take all that away what's left? The answer is nothing.

And so I would ask you to ask yourselves, do you have a reasonable doubt because Mr. Gallentine, according to the evidence, has creative amnesia?

Do you have a reasonable doubt because the Government gave Mr. Gallentine every reason to color his testimony in this case? Maybe not because he really wanted to, but because his liberty is at stake?

Do you have a reasonable doubt because the Government takes the position that Mr. Gallentine, their chief witness, committed perjury in this case?

Do you have a reasonable doubt because if you take away Gallentine's testimony there is a void; there is nothing to the contrary; there is nothing else to show that Berkson did anything.

Do you have reasonable doubt because every employee who testified, who worked for Gallentine said, "I never spoke to Mr. Berkson about this case. I never told him about the forgeries."

Do you have a reasonable doubt because at the

ss4

very time that this was going on Mr. Berkson used his discretion to sell some Leasepac stock in the account of Mr. Caplan?

Do you have a reasonable doubt because Mr. Berkson had nothing to do with this Robotguard block of stock that came in through Mr. Bloch and arranging for the Leasepac stock, as Mr. Gallentine has testified?

Do you have a reasonable doubt because there is testimony of Mr. Bloch that he sent his securities to Packer-Wilbur and the circumstances that he sent them just doesn't ring true?

Do you have a reasonable doubt because nobody, not Robert Berkson, not anybody else, when they have certificates that they have been sending all over town and to other cities and that they can sell to anybody in the world would call his father and say, "Dad, won't you buy $40,000 worth of securities from," knowing that they are phony?

But the question, ladies and gentlemen, is not do you have a reasonable doubt because of any one of these reasons that I have suggested to you, but taking this case as a whole, taking all of the evidence that you have heard, asking yourselves all of the questions which I have just been asking, do you have a reasonable doubt as to the

guilt of Robert Berkson?

Ladies and gentlemen, in England they say that the Crown never loses if justice is done. And in the United States we have a similar expression, and we say that the Government never loses if justice is done.

The Government can't lose this case, because if justice is done and you acquit Mr. Berkson the Government will carry the day. Nobody wants you to come in here with a verdict which is against the standard of evidence in this case.

And I ask you, ladies and gentlemen, let the United States Government carry the day; let justice be done on the basis of this evidence in this case. Acquit Mr. Berkson.

Thank you.

MR. ANOLIK: May we have five minutes' recess, your Honor?

THE COURT: Does anybody want a recess for five minutes before we continue?

MR. LOWE: Yes.

THE COURT: We will take five minutes. The jury will come back in five minutes.

(Recess.)

SUMMATION ON BEHALF OF DEFENDANT RIND:

MR. ANOLIK: May I proceed, your Honor?

THE COURT: Please.

MR. ANOLIK: Judge Cannella, Counsel, Madam Forelady, ladies and gentlemen:

I am last, I hope not least, in addressing you. That is the way the procedure is ordered by the statute, and I am going to try to talk not too long to you. I know you have been very patient, and I really appreciate the attention which you have given everyone.

You know I represent Mr. Rind, and I am not here to tell you what to do; I am just here to reason with you and to try to give the point of view which I think you should apply in deciding the facts of this case.

I would like you all to sit back, take a deep breath, perhaps, and I will try not to be boring; I will try to be perhaps a little shorter than my colleagues, and I think some of the facts I go into may be of a little different emphasis.

As I told you in the opening address I gave you, there would be only one witness who would say anything incriminating against Mr. Rind, and I think that that is borne out, Mr. Gallentine, and you have heard his name time and again, was the only one who said anything about

Mr. Rind which could conceivably be incriminating. I say conceivably because I think even in the testimony he gave at trial there was a great deal of contradictions and equivocation.

I think that a witness like Mr. Gallentine must give nightmares to a prosecutor like Mr. Lowe. Mr. Lowe, unfortunately, cannot choose his witnesses; he has to take them as they come. And I think you saw Mr. Lowe cross-examining. When I say cross-examining, actually it was direct examination, but I don't think there was a doubt in anybody's mind that he was cross-examining his own witness; and if I recall correctly - and your recollection, of course, prevails - Mr. Lowe sometimes even raised his voice like he was a little bit annoyed about what "testimony" was coming from Mr. Gallentine. Because Mr. Gallentine, as Mr. Lowe himself very fairly told you, had given at least three different versions of what has occurred.

Now, in June of 1973, just about two years ago -- three, as a matter of fact -- Mr. Gallentine testified before a grand jury, and he testified before that grand jury, he said, Mr. Gallentine, if you remember, originally, without any knowledge of any deal, he says, "No, I went, I had no knowledge of any deal; I just confessed all my crimes and I had no idea what the Government was going

to do. It was just recently that I suddenly found out that the Government had decided to bestow a medal of honor upon me for the lies I told and is going to let me plead" -- which he did already -- "to one count, the lowest count, which is a two-year count of the indictment, and to dismiss all the other counts because I'm such a fine feilow."

Now, Mr. Lowe on his re-redirect examination brought out, I thought, very forcefully that that was a completely false statement, and he challenged Mr. Gallentine by saying, "How can you say that you just found out? How can you say you just found out about the deal that you were supposed to be getting?"

And I don't have to read to any extent from this record, but, basically, what was said on re-redirect by Mr. Lowe of his own witness, Mr. Gallentine was that he said to Mr. Gallentine, very briefly:

"Mr. Gallentine, in connection with the so-called deal or agreement that you have with the Government of the United States, isn't it a fact that you were told the very first time you met with me" -- and that is years ago -- "in the United States Attorney's office exactly what you could expect?"

And Gallentine says, "Yes, you did mention, yes."

And then Mr. Lowe comes to Mr. Rind's aid and

he says, "Why, then, Mr. Gallentine, did you persist in telling, in saying in response to Mr. Anolik's questions that you just made your deal a short time ago?

"A (From Mr. Gallentine) Well, weait a minute now, when I first appeared, when I first came to your office, you were telling me of the seriousness of it, what could happen," and so on and so on. Well, there is a whole colloquy, you remember it. I just wanted to refresh your memory as to that threshold.

(Continued on next page.)

In other words, Mr. Lowe can't believe his own witness, why should you believe the witness? I don't believe Mr. Lowe would come before you and say Mr. Gallentine is a credible witness.

I think Mr. Lowe is disgusted with Mr. Gallentine, and I think rightly so. I think Mr. Lowe feels that Mr. Gallentine is not entitled to even the deal that he made.

You remember when Mr. Lowe talked about that deal in his own summation he used the past tense, "he had a deal." That is a problem Mr. Gallentine has to face with Mr. Lowe and the United States Government, but the fact remains, ladies and gentlemen, that you twelve jurors, and only twelve of you, of course, will deliberate, are being asked to decide the guilt or innocence of my client, Mr. Rind, of felonies on the testimony of Mr. Gallentine.

Mr. Gallentine testified in the grand jury, as I said, about three years ago, in June, and that exhibit, the grand jury testimony of Mr. Gallentine, is now before you. You can take it into your jury room, if you wish, andr ead it. Remember thatwas a long time ago, and I submit to you, ladies and gentlemen, that when you read the grand jury minutes of Mr. Gallentine you are not going to find anything similar to what he said in this courtroom.

Mr. Gallentine said very little about Mr. Rind, and I submit what he said was not incriminating, because he said that Mr. Rind was the top salesman of this firm. He is a salesman. When you want to put deals together, you have to raise money, you have to look for s ales and purchases, and you go to your salesman and, quite properly, Mr. Rind did work out deals for the company whereby they could generate business.

Is that so unusual about a salesman? I submit it is not.

MR. Gallentine says in his grand jury testimony that Mr. Rind generated the sales and he says, basically, that Mr. Rind was a salesman.

I am not going to read all the grand jury minutes to you, ladies and gentlemen, because you can look at this yourselves, but does he say anything in his grand jury minutes about Mr. Rind signing customers' securities? Absolutely not. He says no, it never happened.

"Apart from Mr. Rind, didyou have any conversations with either of the principals?"

You know what he says -- and this is a question by Mr. Lowe in the grand jury, and I ask you to listen very carefully:

"Apart from Mr. Rind, did you have any

conversation with either of the principals" -- and "either" means two, and Mr. Rind is not a principal -- "of the company with regard to the use of customers' Leasepac stock for the benefit of the firm?"

"A No, no, Mr Rind just handled -- Mr. Rind set up the transactions, be they sales or loans, and he followed through. Mr. Berkson and Myman were aware, but my contact was with Mr. Rind."

He is saying his exact --

"Q Could you say Mr. Hyman and Mr. Berkson were aware -- can you tell us how you knew they were aware of what was going on?

"A I had conversations with them as to how we got through the day cashwise and what we had to do in order to get the amount of cash necessary."

Didn't discuss that with Mr. Rind. Mr. Rind set up the deals and he says, "Look, this is the deal, follow through on it."

For the very first time in this trial, Mr. Gallentine suddenly says he recalls, and in his entire grand jury testimony he never said it, and that was at a time when there was no defense lawyer there, no judge present, only the U. S. Attorney and him and the grand jurors are present, and he never once says that Mr. Rind

ever told him to forge names or anything of that sort.

So for the first time in this trial, and I will tell you why he did it, he says, "Oh, yes, Mr. Rind knew what was going on. It was obvious, everybody understood what was going on."

There is no evidence of that except Mr. Gallentine's inferences.

Ladies and gentlemen, Mr. Gallentine is a witness, I submit, who has strong motivation to lie. Let's understand what this man accomplished. He is quite a court astist. He conned the United States Government. He came in and knew he was a dead duck, and this is a long time ago, years ago, before he testified in the grand jury, and he was found to have ordered the forging and to have forged himself numerous certificates of stock.

There is no question about the fact that Mr. Gallentine committed a crime. There is no question, I submit to you, that Mr. Hyman committed a crime. He has fled to Spain.

Sure, you have a crime. No one doubts that. But Mr. Gallentine is looking to save his neck. Who can he turn to? He can'tdo anything with respect to Mr. Hyman, he is off in Spain. that is not going to benefit him any.

He says, "I want to cooperate with the Government. But the point is, he can't cooperate against Mr. Hyman because he is in Spain. He can't cooperate against Mr. Berkson because he has already signed an affidavit for Mr. Berkson that Mr. Berkson has not done anything.

Who is left? He can only now go against Mr. Rind.

Mr. Rind, I submit to you, has done nothing whatsoever to help Mr. Gallentine. As an employer, he has not done anything for him. Mr. Gallentine says, "The hell with him, if I have to save my neck and give the Government somebody, let's give them Mr. Rind. He is the guy, by process of elimination -- we will give him Mr. Rind."

And that is who he testifies against in this trial, and not even forcefully, but in his grand jury testimony, where he has not yet worked out deals with anybody, he says -- He doesn't say anything that bad here. In fact, he doesn't say anything, I submit, incriminating against Mr. Rind, because he is saying Mr. Rind set up the deals, says he knew about things, but he doesn't say what he knew. He knew the company needed cash, and he was trying to generate cash.

You remember Mr. Gallentine said that Mr. Rind

would be told about these things in the morning, but Mr. Gallentine was not in the courtroom when Mr. Rind's secretary, Mrs. Sussman -- I think she was the first witness who testified here -- she was Mr. Rind's secretary, and if anybody would know about his habits of coming to work she would know.

And do you remember what she said, that he never came to that office before noon, before lunch, and Mr. Lowe even asked her on cross-examination, "Are you sure of that?" And she said, "I am positive."

This man is a salesman, he is out drumming up business during the day, he can't sit in an office. He is the salesman here.

The Government has been investigating this case for years, certainly before the grand jury started, but they don't go into a grand jury cold, they prepare their case for the grand jury, and when you consider the evidence in this case, and his Honor will tell you, you don't only consider the evidence, you consider the evidence or the lack of evidence, because the Government has the burden of proof. We have no obligation, Mr. Rind has no obligation to prove or disprove anything. That is not his function.

He is presumed innocent. He pleaded not guilty

in this case. When he pleaded not guilty in this case, ladies and gentlemen, he denied every accusation against him, and there is nothing for him to explain away. What else could he do? If he went up there, he would say, "I deny what Mr. Gallentine said."

You heard testimony that he is an excitable fellow, and Mr. Lowe can raise his voice, too, so what would we have, a shouting match?

If I made a mistake as an attorney in not putting him on, I hope you don't hold it against [illegible]. All he could say is, "I didn't do it." There is no purpose in him just going on the stand to repeat that, but the lack of evidence I ask you to consider, too.

The Government, the very last witness they put on is an SEC representative, and he has been in the courtroom all the time, and Mr. Gallentine said he conferred with him many, many times, and presumably they went over books and records, and the Government comes in with this piece of paper, Exhibit 29, and he says, "This thing shows that Mr. Rind was a partner, an officer of the corporation."

Well, you look at this. This is a form submitted apparently, because it is in evidence, from Packer, Wilbur & Company, it is not even signed by anybody, and it is just a very short thing, and they say he is a vice

president.

If he is a vice president, how come he can't sign checks, he can't bind the company?

Gallentine said this man couldn't sign checks or paper for the company, couldn't bind the company, and Gallentine is cashier, he knows. What kind of executive is this?

Mr. Bloch said that Mr. Hyman in a conversation on the phone referred to his partners. He may have said partners or he may have used the singular, and Mr. Bloch doesn't have perfect recall on an incident he really has no reason to recall. But does that mean he is talking about Mr. Rind?

There are other people mentioned here. Thre is a Bertram Bookholder, there is an Archie Packer, a Mr. Berkson, there is a Mr. Rind, but he doesn't have to be talking about Mr. Rind, and I submit he couldn't be talking about Mr. Rind, because nobody in this firm ever said Mr. Rind was an officer, not even Mr. Gallentine.

Gallentine says, "I don't think he is an officer." You won't find a single document of all the documents introduced in evidence signed by Mr. Rind, or a single check singed by him.

So Mr. Rind is being made the goat here. That

is about the size of it.

I submit to you, ladies and gentlemen, that another thing that our friend, and I use that advisedly, Mr. Gallentin said in his grand jury minutes, a d I have a right to quote from this because it in evidence -- he says:

"Q Well, did you ever discuss this specifically with Mr. Rind?

"A Yes, yes, a number of -- in fact, the majority of the customers were his" -- he is talking about the forgeries -- "a majority of the customers were Mr. Rind's." That is what he said in the grand jury, but not here.

Did you see the Government produce even one witness who said they were a customer of Mr. Rind's, whose stock was forged? Do you think Mr. Rind would permit the forgery of his own customers' names? He would be out of his mind. A salesman relies upon the good will of customers.

On top of that, when Mr. Bloch, who apparently had found out that Mr. Hyman and Mr. Gallentine, apparently, were forging his name to stock certificates, Mr. Hyman says, "Look, we will give you a dollar. We don't have any money, but we will give you a dollar a shara anyway," and when he speaks to Mr. Rind, and if Mr. Rind

was in on this deal, he doesn't want to put his head in the noose, if he can get the guy to lay off, that is all right, but what does he say? "Go drop dead," or some other epithet. He says, "I won't give you two cents."

Is that what a man says who feels guilty? That is righteous indignation.

I might say anotherword about Mr. Bloch. There is something fishy with Mr. Bloch here. Robotguard, as you know, was underwritten by Packer, Wilbur, and presumably Mr. Rind as a salesman is trying to sell that stock to his customers, and unbeknown to them, mind you, Mr. Block and Mr. Lipschutz, I believe his name was, who were the major stockholders, mind you, in this firm suddenly are selling the stock less than a year after the company is formed and it is depressing the market, and what do you think that makes Mr. Rind look like to his customers?

Do you blame him for being angry at Mr. Bloch? All of a sudden the people who are supposed to be running this company, who formed it less than a year before, are selling their stock and taking the bottom out of the market, and Mr. Rind has been touting this stock, presumably, to his customers. I think he had a perfect right to blow up.

Ladies and gentlemen, Mr. Rind is here to face the music. He is not in Spain. Mr. Rind is on trial,

ladies and gentlemen, because of Mr. Gallentine, nobody else. No other witness in this entire trial has said anything incriminatory about Mr. Rind. There is nothing wrong with arranging sales, there is nothing wrong with arranging transactions, that is what a salesman is supposed to do; nothing wrong with generating cash or looking for deals.

His own secretary, Mrs. Sussman, never testified Mr. Rind had asked her to do anything improper, never told you he knew anything about it. As a matter of fact, she said Gallentine told her it was perfectly all right to sign the certificates and she did it.

Do you think that if Mr. Rind was aware of what was going on, and he comes on heavy, apparently, do you think he would have hesitated to sign some of them himself or tell his secretary to sign them? What for? Why should he put his head in the noose for this situation. He is not even involved in the company from the standpoint of being able to draw out money even for a postage stamp. They are trying to make him look like an officer of this company by this puny little document here (indicating).

The Government has been investigating this case for years. Do they put on a witness from the SEC or the National Association of Securities Dealers, or anyone else

to say, "We looked at the records and the records show he is an officer?"

They didn't do that. They didn't even tell you they got this piece of paper, they just introduced it, and Mr. Lowe only asked two or three questions of this man who has been on the case for years.

Did they introduce the charter, the corporate minutes? Where is the resolution making him an officer? Don't you think if they had it, they would have introduced it? Don't you think if they had any evidence other than Mr. Gallentine's lies that they would have introduced it, after all these years? You bet they would.

Mr. Rind is a man who was trying to do a job and he happens to be a convenient fall guy. There but for the grace of God goes anyone.

Mr. Gallentine made a phony deal with the Government, Mr. Gallentine said, "I will give you evidence," and now that the time is getting short, he is telling you, ladies and gentlemen, that, "Oh, yes, Mr. Rind was the culprit."

He tells you that for the first time in this court that he knew about the alleged forgeries, and why? Because the heat is getting hot, the temperature is rising in the kitchen. They say if you can't stand the

heat, get out of the kitchen, and he knows his sentence is coming up one of these days, and he now has to produce something for the Government.

How is the Government going to tell the judge what w wonderful job he did in cooperating if he doesn't give them someb ody who is alive and here? He can't give them Hyman, Richard Nixon, he can't give them anyone else.

"So let's give them Rind. Rind means nothing to me. I don't even like the guy, he yells a lot." So he says, "The heck with him, I will put him in a box, what do I care."

Do you think he gives a damn? The problem is that Mr. Lowe, unfo tunately, is not going to permit a witness without disclosing to you -- and I think that is very credible of Mr. Lowe to do that -- he told you very frankly, ladies and gentlemen, that there were several different versions that Galientine had given to him, and indeed there are, and I ask you, if you so desire, to look at the grand jury minutes, and when you read these grand jury minutes, and remember that was at a time when if this man wanted to lay it on thick, he could have done so, and he said very little against Mr. Rind, just generalities. In fact he is asked:

"Q How specifically would Mr. Rind arrange these

transactions?"

They are talking about the transactions that generate money.

And he says, "That I don't know."

"Q Did Mr. Rind ever describe to you how he accomplished this?

"A No."

He can't think of things, and he knows he can't invent situations because that could be thrown back in his face.

The Government, unfortunately, has to go by the witnesses that they find. Mr. Lowe is not going to manufacture a witness,he is going to take a witness who happened to be the cashier. He would love to have Mr. Hyman here, I can assure you, but unfortunately he is not here.

Mr. Gallentine is the only fellow in the courtroom. I think that when you think back at the cross-examination and examination of Mr. Gallentine that you will have to admit that Mr. Lowe has a very low opinion of Mr. Gallentine, and rightly so. I don't think Mr. Lowe would want any of you to resolve doubts against the defendants unless you are convinced beyond a reasonable doubt.

The only evidence you can point to, ladies and gentlemen, is a witnesswho even Mr. Lowe admits has given three or four inconsistent stories.

The man is a liar. Is that what you are going to predicate the guilt or innocence of a fellow human being on? I don't think you want that on your conscience any more than anyone else.

Ladies and gentlemen, we have been talking here basically about a case that is really quite short. My colleagues here have spoken to you at great length. I am not going to talk to you as long as they spoke to you.

You remember Abe Katz. Mr. Gallentine had said that he gave stock for Abe Katz to Mr. Rind. Yet Abe Katz testified he got the stock directly from Mr. Hyman. Another lie.

Mr. Lowe will say, "Well, it could have been done in another way," but Mr. Hyman came to the office every afternoon, and there was no reason to do it another way.

Also, Mr. Gallantine is the only one of all the employees that testified here, and not one of them said that Mr. Rind told them to do this.

What arrangements Mr. Gallentine had with Mr. Hyman we don't know, but you can get there is a good

reason why Mr. Hyman is not around.

Mr. Gallentine perhaps did not have the wherewithal to run away. That we don't know. So he is here to face the music. This man is an admitted criminal, remember that. Why would he stop at lying to inculpate someone else? Why not put it on Mr. Rind? If he is willing to forge signatures, if he is willing to create this dishonest situation, do you think he would hesitate for one minute to frame someone else?

I don't for one second suggest Mr. Lowe would be a party to that, and I know he would not, so don't get me wrong, but Mr. Lowe has to take the witnesses from whence they come, and Mr. Lowe is pretty disgusted with this witness.

They say that when a person is indicated for a felony, a philosopher said that he is born all over again, because what happens to him as a result of what you do will decide the future course of his entire life.

Remember that, ladies and gentlemen. He is born all over again by this felony indictment, the mark of Cain is put upon him if he is convicted of a felony, and the criminal law asks you to apply the highest standard of proofknown to the law, namely, the standard of proof of beyond a reasonable doubt, because the criminal law

doesn't want a person convicted if there is any reasonable doubt.

I can assure you that I believe I interpret the sentiments of Mr. Lowe when I say he would be the last person in the world who would want you to convict if you had a reasonable doubt.

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And I submit to you, ladies and gentlemen, there are many reasonable doubts in this case, because when the case is predicated upon an imperfect witness you have a right to reject that witness' testimony; and when you find that his trial testimony is so diverse, so different than that of his grand jury testimony, where there was no defense lawyer to cross-exame, where there was no judge to keep a check upon him, where he was just there with the U. S. Attorney and himself and the grand jurors, and he comes up with virtually nothing in the grand jury testimony, and suddenly comes up with a great deal more here all of a sudden, and even when he comes up with it here it's equivocal, I submit to you, ladies and gentlemen, that the Government has not made a case beyond a reasonable doubt.

Reasonable doubt, ladies and gentlemen, will be explained to you by the Judge. I don't have to explain it to you. But just use your common sense. When you listen to his Honor's instructions on the law remember that your obligation is not to incur the favor or disfavor of the prosecution or the defense counsel. Mr. Lowe is not looking for you to do a favor to him and I am not looking for you to do a favor to me. We are not looking for sympathy or prejudice. We are asking

you to decide this case on the merits.

And you remember what you were told by all counsel, and even by his Honor, the testimony comes from the witness stand; and if that testimony convinces you beyond a reasonable doubt, then and only then can you apply a standard of proof.

Mr. Gallentine is the only witness that the Government produced. With all the investigations they had, with all of the agencies that were at their beck and call, with Mr. Soffler working for years with Mr. Lowe on this case, and he puts Mr. Soffler on for three minutes in this whole case. That's what Mr. Soffler can come up with, this piece of paper, that's all, after three years of investigation, or five years, or whatever it is. Can you imagine such a thing?

The NASD, they come up with some facts and figures that the company was losing business. Sure they were losing business. The whole stock market perhaps was depressed at that time. But the fact remains, ladies and gentlemen, that there is no credible evidence that Mr. Rind had any stake in this business except as a salesman. This document, I submit to you, means nothing. This is a document prepared by Packer, Wilbur. Who prepared those documents? Presumably Mr. Hyman. Who

else could prepare them?

Mr. Soffler didn't even tell you where he got it. He got it out of the files of the SEC. How did it get in there? He didn't tell you that. Who put it there? Who made it? What verification did you use? Did you hear Mr. Lowe ask him, "Did you verify the accuracy of that?"

No.

Did you hear one witness testify to corroborate that?

No.

Did you hear any testimony about books and records of the corporation to cooperate that?

No.

Did you hear any other witness say that Mr. Rind had done anything improper?

No.

I knew, after all this time, after all this investigation, that's all they could come up with, Mr. Gallentine.

And remember, ladies and gentlemen, this trial began with an admission on everyone's part that a crime was proved. Sure. Mr. Gallentine confessed. Mr. Hyman ran away to Spain. No doubt a crime was

ss4

committed. I told you that in the very beginning. But don't compound what Mr. Gallentine has done. Don't let him pull the wool over your eyes as he did to the Government?

Do you realize what he did to the Government? I don't think you really realize. This would be funny if it wasn't so tragic.

Here's a man who sells the Government a bill of goods, saying "Don't worry about a thing, I will make your case for you."

So they say, "That's great."

Now, mind you, before he even went into the grand jury the Government didn't even know what he was going to say, and the United States Government doesn't go back on its word, and Mr. Lowe is a man of great integrity; I am sure he would not go back on his word. He is already told, way in advance of his testimony before the grand jury, "Fine, you are going to help us out? Great. This is your deal. You can plead guilty to a two-year count and all the other counts will be dismissed."

So he has a deal. He is locked into his deal, and he gives him sparse testimony in the grand jury, and at that time they may still have been in hopes that they could get hold of Mr. Hyman. Mr. Hyman would have

ss5

been a pretty big fish to get hold of, and so they are still interested in Mr. Gallentine in 1973 because, after all, Spain is not the moon; presumably you can try to get people back from Spain; so they may have been living in hopes to at least get Mr. Hyman back, and now time is running out. They haven't got Mr. Hyman back, and they say, "Gallentine, you know, we have read over this grand jury testimony. It's not that hot. And who do you have here? All right, can you give us someone else? Who?"

He says, "Don't worry, I will come up with something."

Then another bombshell falls on the heads of the Government. They find out that Mr. Gallentine executed a document, an affidavit, saying that Mr. Berkson had nothing to do with this case, which again is contrary to, I presume, what was said elsewhere. And I have nothing against Mr. Berkson; I'm just telling you what the facts are here. He executed that document, and the Government now is fuming.

They say, "What are you giving us?

"No, wait a second. You still have Mr. Rind. I am giving you Mr. Rind."

So the Government is anxiously awaiting what is

going to be said about Mr. Rind, and even the Government has to come to Mr. Rind's defense, because the fellow says, "I didn't know about the deal until just a few months ago; that Mr. Rind, he says for the very first time at this trial, knew about the forgeries. He never said it before. He said some general statement that he knew what was going on.

Sure he knows what's going on. He knows there is a need to generate cash; he has a need to make sales.

If you are dealing with someone whom you do not distrust, you're dealing with a fellow employee, okay? You don't say to yourself, "Wait a second, I am asking this fellow now, I just made a deal to sell, let's say, 10,000 shares of Leasepac, okay? The position on the books of the company is that they have more than 10,000 shares.

Mr. Rind by looking at the books would assume there is no problem, they have more than 10,000 shares.

Mr. Gallentine said, "Yes, we did have more than 10,000 shares but we didn't have them physically at the moment in our possession; we had some of them, not all.

Now, Mr. Rind would say, "Well, wait a second, look, this is the deal. Just get up the stock."

Would he assume that this man is going to forge that stock? Would he make that assumption? No, he wouldn't if he has no reason to believe that that would happen. He would assume it would be gotten up in some legitimate way.

And Mr. Gallentine said everybody assumed. Why would everybody assume such a thing? I mean, that's ridiculous. Would you assume, if you're talking to your neighbor or fellow worker, and if you say, well, you know, we have to get up some checks to pay for the repairs that are being made in the office -- let's assume you're a cashier, or let's assume you're the office manager, and you're talking to the cashier, 'We have to pay for those repairs, draw a check on petty cash," and the cashier says, or comes into court and says, "Well, you know, we only had a hundred dollars in petty cash, and the work was $150, so the office manager obviously knew he had to forge a check for $50 more."

What do you mean obviously knew? Do people who are not dishonest suddenly become dishonest because one person is dishonest? No.

That's what Mr. Gallentine did. He is a crook, a self-confessed crook. He was working for -- he was hired by Mr. Hyman. You can infer whatever you

want, there must have been some deal. You can't tell me that if Mr. Gallentine was doing what he was doing for $15,000 a year. That is baloney, to use Mr. Lowe's phrase.

Can you tell me for one minute that this man, Mr. Gallentine, would be doing what he is doing, risking all this inculpation for $15,000 a year less deductions and all that? Oh, no. Hyman had some deal going, you can depend upon it.

And Gallentine is here today, and he says, "Look, I got away with an awful lot." With all this that he accomplished, mind you, the most he can get now is two years in prison, and he says, "Maybe I can cut that down. I conned the Government this far, maybe I can con the jury. Maybe I can tell them, "Look, I did it only because I knew it had to ne done."

Think to yourselves, why did he assume it had to be done? Why didn't he say, "Hey, wait a second, I don't want to forge anybody's signature. Go to hell. You forge it. What do you mean forge signatures?"

Why didn't he say that? Did you ever th ink of that to yourself, why didn't Gallentine come forth and say, "Hey, wait a second, I'm a cashier; I have a take-home pay of $230 a week or so" - maybe a little bit more

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because he has four children - "What do you mean I am going to forge certificates? I am going to tell these people who work here to go forge certificates? For what? What do I get out of it? What do I become, a hero or something?"

Oh, no. This fellow has a deal he was working, and he was a crook, and he was working a deal, and nobody does that. Use your common sense.

You know, one thing you're asked to do is not to leave your common sense outside of this court.

You know, when they say that when you are jurors you are not supposed to be influenced by sympathy or prejudice, that doesn't mean you are supposed to be like a statue. Oh, no. It doesn't mean you have to believe everything that's told to you by a fellow like Gallentine who is trying to do everything he can to get from under.

Come on, ladies and gentlemen, you know, we weren't born yesterday. Th is Gallentine is not doing what he is doing, he is not causing these young kids in his place to forge all the certificates because they are giving him a nice paycheck, a big fat paycheck of maybe $250 a week. Oh, no. There's a lot more to it, you can depend upon it, and the guy knows about it is

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Mr. Hyman in Spain. They have a song about that, but I forgot the song.

But, ladies and gentlemen, I don't think that you are going to compound the injustice that has already been done by Mr. Gallentine by letting him put a noose around the neck of Mr. Rind. You have not heard any credible evidence against Mr. Rind except from Gallentine. You call that credible? Mr. Gallentine, you can presume, would say anything at this point to get himself out from under. He has burned his bridges behind him. He can't give Berkson away; he can't give Hyman away because he is away already, and he has got to give someone, because he figures, "Look, if I come out of this without getting any time I'm really a winner."

Ladies and gentlemen, I submit to you that what you have seen in this case is something that the Government is just as disgusted with as I am and as you should be. I don't think the Government is pleased about Mr. Gallentine for one second. I don't think the Government would ask you to believe Mr. Gallentine because they have already asked you not to believe him. They have told you, "Well, try to find something you can believe about him." They themselves have told you that there are several versions. They say, "Look, we

know you can't believe everything he says because many of the things he said are inconsistent"; so they're asking you to believe, try to find something you can believe of what he said. "At least believe this part. All right, we know he is lying in parts A, B, C, D and E, and maybe part F you can believe."

No, that's not the way reasonable doubt works, ladies and gentlemen. His Honor will tell you that if a witness in your opinion has been lying, you have a right, if you wish, to reject his entire testimony on the theory that a man who is false in one thing maybe false in everything; that when the Government through no choice of their own has to use a witness who is an admitted liar and who they themselves call a liar, that the Government says, "Well, look, not every case where there is an indictment is there a conviction. Mr. Lowe will go into a new case; I will go into a new case; Mr. Brodsky, his Honor, even you, but what you do here will affect this defendant for the rest of his life. So let's not give another accolade to Mr. Gallentine's perfidy, to Mr. Gallentine's lies by letting him accomplish something, because if you vote to convict here, then Gallentine can come forward and say, "Well, I told you I would produce someone, and this jury, do you see that, they stuck up for

me. I produced someone. I produced a head for you to roll. Therefore I want you to follow through with my deal.

And he might have a good point there. Can you imagine what he would be getting away with? And you would be part and party to it, and I don't think you want to do that.

Ladies and gentlemen, I don't know why Mr. Gallentine did what he did any more than you do. All we know is that he admitted he did forge a great many signatures, and he must have had a reason that was sweetened with the smell of that old green stuff, money, because I submit to you nobody in their right mind would do it otherwise. Because if he was the type of man who said, well, he was just being led by the nose, that's baloney. There is no reason for that, and I submit you can't point to it.

And look at the grand jury minutes. You have a right to look at that, and they are in evidence, and I submit that you will find that there are complete inconsistencies between what he said.

Ask yourselves questions: Why didn't the Government produce more evidence? With all their years of investigation, why did he put the SEC represent-

ative, the Securities and Exchange Commission's representative on the stand for more than three minutes?

Why didn't they have the man from the NASD, National Association of Securities Dealers, who conducted these investigations? Why did they put on his supervisor?

I mean, why didn't they produce all this evidence that they could have produced?

Obviously because it doesn't spell out criminality. They are not going to waste your time with a lot of figures that don't add up to criminality; so they have to fall back on this fellow Gallentine.

Ladies and gentlemen, I am not going to be much longer. Remember this. As far as this case is concerned it's virtually in your laps right now, pretty close to it. Mr. Lowe will have a chance to rebut because he has the only burden of proof here. He has to overcome the presumption of innocence; he has to satisfy you beyond a reasonable doubt of the guilt of Mr. Rind, beyond a reasonable doubt. Some people say to a moral certainty. Don't be confused by expressions you may hear that nobody can prove guilt to a mathematical certainty. Of course not. We are not dealing with math here; we are dealing with social science, law.

There is a definition of reasonable doubt. So don't be fooled by anyone saying you can't prove guilt to a mathematical certainty. Nobody is asking you to prove it by a mathematical certainty. But the point of this is, ladies and gentlemen, reasonable doubt is the highest standard of proof known to the law, and that standard you can apply, and you ask yourselves questions:

Is there any possibility that Mr. Gallentine is lying? You will have to answer that in the affirmative. You will have to say, "How can he even ask us that? Of course he's a liar. Even the Government says he's a liar." And if you find he is a liar you have to give the benefit of the doubt to the accused; you must vote not guilty.

When I sit down, ladies and gentlemen, I cannot get up again to answer Mr. Lowe. Mr. Lowe has the last word because he has the burden of proof. He is not going tobe permitted to talk too long because this is rebuttal. Ask yourselves, what he is saying, how would Mr. Anolik answer that?

I have great confidence in the jury system, ladies and gentlemen. How would Mr. Anolik answer that? What he is saying, is it valid? Ask yourselves, has he satisfied us as to why he did not produce more testimony

from the Securities and Exchange Commission? Has he satisfied us as to why he hasn't produced more testimony from the National Association of Securities Dealers? Has he satisfied us that he hasn't got another single document in evidence to show criminality other than Mr. Gallentine? Has he satisfied us after a five and a half-year investigation, whatever it is, four years, that they cannot come up with anything more than this fellow whose grand jury testimony is so inconsistent and who is an admitted liar?

I submit that when you ask yourselves those questions you will find that Mr. Lowe cannot answer them.

I think you will find Mr. Lowe will tell you, ladies and gentlemen, to come in with a verdict that you believe is an honest verdict. I don't think Mr. Lowe will ask you to convict if you are not convinced beyond a reasonable doubt. I am not asking you for sympathy; I am not asking you for prejudice. I believe I have a right in an American courtroom to ask an American jury to come in with a verdict which I submit, really, that is warranted, and the only verdict that is warranted is not guilty.

Thank you very much, ladies and gentlemen.

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SUMMATION IN REBUTTAL ON BEHALF OF THE GOVERNMENT.

MR. LOWE: Ladies and gentlemen, I am going to be brief. Yesterday you were told I was going to talk for an hour, and about an hour and forty minutes later I shut up. Today I am not going to talk to you very long at all.

I just want to make a few points based on what you have heard this Morning from the other attorneys, because I am sure that the skillful presentations you have heard this morning have left some questions in your minds.

Just a couple of points with regard to what you just heard from Mr. Rind's attorney:

For some reason or another Mr. Rind's attorney thinks it's very important to determine wherher or not Mr. Rind was an officer of the company, and he is not quite satisfied with the form of proof about that subject because he says it's only just a piece of paper.

Well, to begin with, it is only a piece of paper, but it is a paper that the firm filed with the regulatory body that regulates the firms, and when you think about it, what reason would anyone have had back at the time when the document was filed -- and I think the stamp on it shows it was filed way back in 1969 -- what reason would anyone

have had at that time to make it up?

Now, Mr. Hyman was the president, and he took care of these kind of things. Do you suppose he would put down on a piece of paper filed with an official agency that a percentage of his firm was owned by somebody else if it weren't? Gosh, y ou know, Mr. Rind might have found that piece of paper and gone to Mr. Hyman and said, "Okay, give me my per cent. Here it is, it says I got a per cent, give it to me."

Why do you suppose he would do that if it wasn't the truth?

But there is something a little more important than that that Mr. Anolik, when he was talking to you I guess he forgot about, because he is the one who brought it out.

When he was cross-examining Mr. Gallentine, he said to Mr. Mr. Gallentine:

"Isn't it a fact that Mr. Rind invested his own money in that firm?"

And Mr. Gallentine said:

"I'm not sure, but I think he did."

Well, don't you think that if Rind invested money in the firm that he would be at the same par with the other people who invested money in the firm? But,

in any event, even if he wasn't an officer, so what? When you really think about it, what difference does it make?

Just one other point that I want to make but what Mr. Anolik had to say:

I assiduously avoided the use of the word "lie" because lie is a judgmental word; it's a word that in any fair definition means that a person is deliberately, knowingly telling an untruth. And I'm not sure that any of us are in a position to use that judgmental word. We know the facts; we know that Mr. Gallentine was not telling the truth at some point in time because the stories are inconsistent to a point that they cannot be conveniently melted together and explained. I am not going to tell you that he lied, because I am not going to crawl into Mr. Gallentine's Mind and tell you what's there. I'll leave that to Mr. Brodsky and Mr. Anolik to do. They seem to be experts on crawling into other people's minds and saying what other people must be thinking and anything like that, but I don't claim any particular expertise in that area. I'm a lawyer, not a psychiatrist, and I am not going to tell you what was in Mr. Gallentine's mind. I don't know.

Let me get to Mr. Brodsky's summation: There is

just one thing about it, and I think this is really important to bring out. This case is not made up of selective quotes and little pieces in a vacuum. Mr. Brodsky gave you a couple of examples of what Mr. Gallentine had to say, and in one of those instances, I don't know why, but Mr. Brodsky stopped reading. I guess he stopped when he got out the part that he liked, and then he didn't bother to continue with the part that he didn't like.

Well, ladies and gentlemen, the testimony is all there. Any time you want to hear it you will be able to ask to have to read to you; but let me just make this point so you will understand that it's the whole record and the whole case that counts, not some piece that got selected out from somebody's summation.

Mr. Brodsky read to you from page 95 of the transcript about Mr. Gallentine's conversation with Mr. Berkson at a time when he was talking to Mr. Berkson about the stock dividend, and he read halfway down the page and he stopped.

(Continued on next page.)

The next question, after Mr. Brodsky stopped, and going on to the next page is as follows:

'Q Mr. Gallentine, did you tell Mr. Berkson at that time that the reason they were not stockholders of record is that you had used their stock and it might have already been transferred out of their names?"

And the answer was: "I can't honestly remember whether I did say that or not."

Then he was directed to read a portion of his testimony on a prior occasion, not the grand jury that we put into evidence, but another occasion, and having read it he was asked as follows, page 96, and maybe Mr. Brodsky forgot to turn the page:

"Q Having read it, does that refresh your recollection about the substance of your conversation with Mr. Berkson about the stock dividend?

A Yes, that I mentioned to him that we had to use some of the customers' securities."

This will give you a little example of Mr. Gallentine. Mr. Gallentine is trying his damndest to help Mr. Berkson out. You remember when he talked about how they are all one family and it was all understood between himself and Mr. Hyman and Mr. Rind, carefully he always leaves out Mr. Berkson, his buddy.

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Listen to what happens now:

"Q What did Mr. Berkson say to you when you told him that?

"A He mentioned to keep a record of it so we would know who would be entitled to their dividends.

"Q Do you recall anything else he said to you on that occasion?

"A No."

Once again, read what he said on a prior occasion:

"Q Now do you remember? What else did he say to you at that time?

"A He said he would speak to Mr. Find about it."

Mr. Brodsky, for some reason, didn't see fit to read that. The reason, I submit, is that it didn't fit the point he was making at the time, and he left it out, and that is what his point is worth.

I have another point to make about Mr. Brodsy. Mr. Brodsky told you about putting Mr. Berkson's father on the stand and said, "The Government wants you to believe that Mr. Berkson was going to sell this phony forged stock to his own old father. That is ridiculous," he says.

Well, you know, Mr. Brodsky represents Mr.

rm ja 3

Berkson, and he argued very persuasively at times for Mr. Berkson, but I wish he wouldn't tell you what the Government wants you to believe, because he doesn't represent the Government. That is what he wants you to think that evidence means, because that is an easy one to knock down.

You build up a straw man, an argument that really has never been made, and you blow it apart and say, "Look, preposterous."

That is not the point of that testimony at all, ladies and gentlemen. Remember this, think of this: Mr. Berkson called his father in August of 1970 and said, "Dad, we need some help. I would like you to buy 10,000 shares of Robotguard stock, $4 a share, $40,000. Can you help us?"

And his father says, "Okay, I can help you out."

Then what happens? A couple of days go by and Mr. Martin Berkson says, "He called me back and said they don't need the money any more, thanks anyway."

Now, interesting fact: Mr. Brodsky says to you, "Do you suppose if Mr. Berkson knew they were going to have these forged certificates he would sell them to his father?"

I suggest to you, ladies and gentlemen, that

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the first time he talked to his father he didn - know, and I will tell you how you can tell that.

Remember the dates, on the 20th of August 1970, Mr. Bloch's stock was delivered to Packer, Wilbur, and on the 20th of August 1970, the same day, the very same day it was delivered in, 10,000 shares of it were delivered out to R. G. Berkson & Co., Robert Berkson's signatory on that account, and so the first time he talked to his father had to be before the transaction took place, and it had to be, for that same reason, before they knew what stock they would use to get this $40,000 they needed, and you might find that once he found out whose stock was going to be used and how it was going to be used, and that it wasn't legal, that the last thing in the world he would do was stick his father with it, and that is why he called his father and told him, "Forget it, we don't need the money." Because at that point you might find that he wouldn't dare stick his father.

So when Mr. Brodsky sets up this straw man and blows it apart, ladies and gentlemen, don't be fooled, because the evidence is there, what you make of the evidence is there, regardless of what Mr. Brodsky would like the argument to be, because it is one that he can rip apart, but he did not address himself to the point of what that

rm ja 5

evidence is about.

Just remember, ladies and gentlemen, he says, "There is no evidence that Mr. Berkson did anything," but he had that stock sent to himself for a month. That is doing something.

Another thing: Mr. Brodsky pooh-poohs all this evidence about the checks and the bank statement and all this kind of stuff. He is right, and I told you what the point of that evidence was. It is one thing to get up and say to you that they needed money. Well we all know it is one thing to say it, and it is another thing to show it, and it is also something to show it in a way that shows you waht is going on.

This about this: This firm needed money, so what did they do? They did phony stock transactions, the stock went out to Berkson's account for a month and eventually was bounced back, never got paid for, the transaction never really happened, but on the other side of the fence we have Mr. Rind setting up a phony deal with First Philadelphia to generate money, and that, ladies and gentlemen, is phony.

Mr. Brodsky says, "Why tell Mr. Berkson? He doesn't need to know."

Why not tell him? He is involved in all the

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other phony stuff,why shouldn't he be involved with this as well?

How about the kited checks? Put them aside and brush them under the table, because Mr. Brodsky doesn't want to talk about the most significant point of those checks: Who signed them? Don't tell Mr. Berkson because he is so honest they don' want to let him in on i' this little piece about using the customers' stock, but let him sign the kited checks, the checks to Gallentine are signed by Robert Berkson, the checks to Patricia May are signed by Robert Berkson.

Do you suppose when he was signing those checks he just signed them, didn't know what they were for, didn't know anything about it? Or do you suppose, more logically, that he knew exactly what was going on and was taking part in it voluntarily?

Mr. Brodsky made a point about Mr. Caplan, and it was a pretty good one, I thought, for a minute, but when I started to think about it, it began to go away again.

Mr. Caplan, you will recall, delivered the stock into the firm, and he said, "Sell it when you think the time is ripe," or whatever, "at your discretion, because I trust you, have confidence in your judgment," et cetera.

And Mr. Brodsky said, "If he had that much

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clout with that account, why didn't he just sell it and take the money?"

Well, I kept thinking about that, why he didn't. The truth is, and the evidence shows he did, he took 100 shares and sold it and kept the money. 200 he let Mr. Caplan have the proceeds from, but he did take the other 100, somebody did, and it was Mr. Berkson's account, he had control over it, discretionary control, but something even more significant, Mr. Brodsky talking about how Mr. Berkson was -- he thought the time was ripe for Mr. Caplan to sell the Leasepac stock and he sold it for him and sent him the proceeds in October or so.

Isn't it interesting, ladies and gentlemen, something Mr. Brodsky probably doesn't want to think about it, Eleanor Melling -- do you remember her? She had Mr. Berkson for a customer's representative also, and what did she say? She said that she called up Mr. Berkson and wanted to sell her stock, and Mr. Berkson said, "Oh, no, it is not a good time to sell. Don't sell."

It must have been pretty close to the time that in the exercise of his judgment, discretionarily on behalf of Mr. Caplan, that he was selling for Mr. Caplan, so why do you suppose he was telling Mrs. Melling, "Don't

rm ja 8

sell, it is not a good time to sell."

Do you suppose, ladies and gentlemen, it is because he knew that Mrs. Melling's stock was already gone, that it had been formed and shipped out and sold and the money had been used for the firm? Do you suppose that is why he told Mrs. Melling it wasn't a good idea to sell while another account over which he had discretion to exercise his own judgment he was selling for?

Mr. Brodsky didn't mention that. Mr. Brodsky would rather play psychiatrist and tell you what is going on in somebody else's mind.

Remember what Mr. Gallentine said, it was all like a big family, to begin with.

One other thing: Mr. Pugliese said this, and again, Mr. Publiese is not a psychiatrist or an extra-sensory perception person, and he says he is in a 9x15 room--and how big is that? Not very big, ladies and gentlemen. One side of that room is only three feet bigger than me, and the other side is twice as big as me, or so, and while he was engaged in signing the customers' names, doing the actual forgeries, he said that both of these guys, both Mr. Berkson and Mr. Rind, were in the room, and what were they doing there? They were not looking over his shoulder, obviously, and Mr. Publiese couldn't conceivable tell you,

rm ja 9

"Did they see what you were doing or not?" because he doesn't know.

Only one person knows did somebody see something, and that is the person himself.

Well, what are they doing? They were saying to Gallentine, "You got the delivery ready yet, got the stuff in the bank? Hurry up," pressing him because the bank was on the phone, you have $150,000 overdraft.

Mr. Berkson had nothing to do with the back office? True. He wasn't the guy in charge of the back office, maybe he didn't even care about the back office, but he cared enough when the heat was on to go running back there and say, "Is the delivery done yet, is it ready, is it ready?"

It just so happens that he is back there, pressing like this, at the very time the deliveries are being prepared, when Pugliese is forging the signatures.

Did he see it? I don't know. The room is 9x15, and he is interested enough that he is right back there breathing down Gallentine's neck to make sure things are moving as fast as they can. Let's put it this way: He certainly could have seen it.

Let me make one comment about another subject: Mr. Gallentine testified that up until he went in the

rm ja 10

grand jury he kept telling the Government that Mr. Berkson had nothing to do with it, didn't know anything about it, and then you know what he said when he got in the grand jury, he said Mr. Berkson was aware.

Mr. Brodsky says -- and when he reads that part, he says, "Whatever that means," and I will get to that in a minute, but, ladies and gentlemen, it is kind of interesting, I suppose, because we are all hearsaying to you, "Mr. Gallentine said this, this and this, and if it happens to help, the result will be we rely on it, and if it doesn't, he must not be telling the truth," and I suppose to some extent we have all done that because, you see, Mr. Brodsky doesn't want to believe what Mr. Gallentine says about things that hurt his case, but he is very happy to believe what Mr. Gallentine was telling the Government all along up until he went to the grand jury, that Berkson had nothing to do with it because that helps his point.

Well, whatever Mr. Gallentine was saying, you will have to decide. There are records of only certain times he said things. There is his grand jury testimony, there is the affidavit that he signed, and there is his testimony here. Those things are a matter of record, with some person like the gentleman over here who is sitting here and taking it all down.

rm ja 11

I would just as soon rely on what he said on the record, at least we know that it was said.

Mr. Gallentine certainly had a motive not to tell the truth because it would be nice and he could help the Government. That's true. Remember what Mr. Brodsky said about motives? Just because a person has a motive to do something doesn't mean he did it, and we know this, we know that Mr. Gallentine could have had a motive to help the Government because, after all, he wanted to please the people who were going to give him this "sweetheart" deal.

Now, I ask you, ladies and gentlemen, despite the fact that he had the motive, he certainly didn't have any greater motive to help the Government than Robert Berkson had to help himself. But despite the fact he had the motive, you saw Mr. Gallentine, and I will let you be the judge of that: Do you think he was trying to help the Government? Do you think he was trying to help us? Do you think he was making up stories and telling lies to try to help the Government? Is that what you saw when he was up there?

Or did you see something else, a man who was desperately trying not to hurt his friend?

Of course, ladies and gentlemen, if he is going

rm ja 12

to take the risk of lying to help the Government for that motive that Mr. Brodsky gave him, if that is what motivated him, if you are going to do that, why not do it well, why not do it real well, why not get up there and sit down and say, "All right, I remember that back in August of 1970 we had a meeting, Mr. Hyman was there, Mr. Rind was there, Mr. Berkson was there, and they called me in and said, 'We're in trouble, and we need money, and we have to do the following things to raise the money."

Then I could argue that they all sat down and agreed to do it. But he didn't say that. He doesn't say anything, and when he does, two minutes later he is backing off it.

I suggest to you whatever his motive to help the Government might have been, it was outweighed by something else -- something else.

What was his motive to sign the affidavit for Mr. Berkson? Who was there when he signed it? Himself and Mr. Berkson. What went on? Who knows. But for some reason he signed it.

You see, ladies and gentlemen, Mr. Brodsky is right when he says just because there is a motive doesn't mean the person did what they had a motive to do, but when you see that it was done and that there was a motive,

rm ja 13

it makes sense.

We don't know what motive Mr. Gallentine had to sign that affidavit, but we do know that he did sign the affidavit, because it is there, it is in black and white. Only he and Mr. Berkson were there, and only he and Mr. Berkson know, and I don't read minds, and I am not a psychiatrist.

Ladies and gentlemen, the people who benefited from these transactions, these crimes, were Wilbur Hyman, Robert Berkson, and Maurice Rind.

MR. ANOLIK: Objection. There is no evidence that Mr. Rind benefited.

THE COURT: That is his conclusion. There is no specific evidence that he profited in any way.

MR. LOWE: As everybody has said, Mr. Hyman is not here. If he were, he would be at the table with the rest of them.

The benefits of the transactions speak volumes about who is involved. Mr. Berkson was an owner of the firm. He benefited. The only evidence that there is indicates that Mr. Rind was also an owenr of the firm. So he benefited.

That, ladies and gentlemen, is what this case is about, because Mr. Gallentine didn't really benefit,

rm ja 14

and all of those basically, if you look at them right now, you know that back in 1970 they were children who signed those names, they didn't benefit. They just did the dirty work, and it goes right back to what I told you in my opening statement, at the top level are the executives who made the decisions and tell people what to do, the middle level is the foreman, the cashier, and at the bottom are the people who do the dirty work.

Well, it is easy to catch the people who actually do the dirty work. Mr. Gallentine was caught with hardly any effort at all, because there were a half-dozen or more people who could point a finger and say, "He did this," but when you are up on top, when you are running the show, when you are shielded from the dirty work, it is a lot harder to get caught. It takes someone like Gallentine to turn around and tell what happened, and what happened was a massive ripoff, many customers having their stock literally stolen from them, and even that, ladies and gentlemen, is important.

It is not once or twice that this happened, but it happened a lot, so much that it become almost incredib le that the people who ran that place didn't know about it. Once or twice maybe you slip it under the rug, but when it is going on, on a scale that it was going on in this case,

rm ja 15

there isn't any rug deep enough to hide it.

That is why I say to put your common sense to work, and you will know who was responsible for what happened here.

When you consider all of the evidence, every bit of it -- not just bits and pieces in a vacuum, but every bit of it, every bit of it, everything that happened, and apply to it your reason and common sense and your judgment and your intelligence, I am confident that you will be satisfied beyond a reasonable doubt, and the judge will tell you what to do from there.

Thank you for your attention.

THE COURT: We will recess at this time until 2:15.

In the meantime, please do not discuss the case or form or express any opinion in this matter, and return at that time.

(Luncheon recess)

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AFTERNOON SESSION

(2.15 p.m.)

(In the courtroom - jury not present.)

MR. BRODSKY: Judge, just so that we state for the record what we are doing about objections to requests to charge, I take it that what we are doing is that all of the objections that -- first of all, to start at the beginning the requests that we made the last time I take it are going to be deemed as having been made again in this trial, and the objections that were made are to be deemed as having been made; is that what we are doing?

THE COURT: I think we should have discussed this before you summed up to the jury, it's unfortunate that we didn't have this discussion before, I would have been prepared to listen to you.

I assume you would submit the same requests and that my rulings would be the same.

MR. BRODSKY: I thought we had said that yesterday.

MR. ANOLIK: I think you did say that.

THE COURT: I said something to that effect, and nobody said anything really in answer to it or suggested any additional requests or anything like that.

MR. BRODSKY: No, I am not talking about

additional; I just want to be sure that the record is protected on the score that the same requests are deemed to have been made and the same objections are deemed to have been made, that's all.

(Blackboard placed in front of jury box.)

THE COURT: Let counsel look at it and see if they have any comments or suggestions.

MR. LOWE: Your Honor, with respect to the interstate transportation of forged securities, I think we have to instruct the jury, because the language of the statute contains sort of an additional knowledge or intent element, because not only does it say with knowledge that the securities are forged, but it is used with specific language "intent to defraud."

THE COURT: You see, that's only a shortcut reduction of the elements to almost a minimum, and what I intend to charge on the transportation is, first, that the defendants transported or caused to be transported in interstate commerce the stock certificates referred to in those counts; that the stock certificates had a forged stock transfer power, and that his intention was unlawful and fraudulent.

I will bring that element of intent in when I give them the elements myself. This is just to keep

them focused on the area.

MR. ANOLIK: Judge, are you going to mention anything about a guilty verdict as against one and not the other?

THE COURT: Possible verdicts, yes, at the very end.

(The jury entered the courtroom.)

THE COURT: (To the jury) I apologize for obstructing your view of Mr. Lowe, but I think you can see that chart better than if I have it moved back, and unless you want me to move it back, Mr. Lowe --

MR. LOWE: Judge, I think they have seen enough of me. They know what I look like.

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2nd trial

THE COURT: I want to thank the members of the jury because although this has been a short trial, I have observed you carefully, and I note that you have come here promptly, there have been no delays on your account; that you have listened to the evidence very carefully to the point where Mr. Anolik sort of felt it beholden upon him to ask you to relax and sit back. That's the careful attention with which you have followed the evidence and the lawyers in this case, and that is commendable, as far as I am concerned.

I also want to thank the lawyers, Mr. Lowe and Mr. Brodsky and Mr. Anolik. To start with, I don't have to tell you because actions speak louder than words, they are excellent lawyers; they are gentlemen, and they have prepared their cases well and presented them well, and I compliment them, because that is not always the case, and I complement them on my behalf as well as yourse, because it's hard enough to find where the truth lies without having lawyers trying to obfuscate or in some way cause your attention to be attracted to some other area which is not really material to the case.

Now why do I say that? Well, let me demonstrate to you why this is so (approaching blackboard).

I have drawn a chart here on the blackboard,

and it essentially contains a skeleton outline of the indictment which I have in my hand. This indictment you will have with you in the jury room. It will be given to the forelady when you leave, and any one of you can look at it.

The first three pages are really introductory to the reamining nine counts.

Now, I have inverted the order of the indictment to show you how it is really all one ball of wax. The tenth count in this indictment is the conspiracy count, and you see I have labeled it such.

The second and third counts are one of the means by which the conspiracy was to be accomplished, mail fraud.

Counts 4 and 5 are another means by which the conspiracy was to be accomplished, the SEC fraud.

And the remaining counts, 6 to 9, are the third means by which this conspiracy was to be accomplished, and that is the interstate transportation of forged securities.

The Government doesn't have to prove all three of these to have been accomplished. Any one or two or more or all of them are sufficient.

Now, after you get through considering the

conspiracy count, which is Count 10 in the indictment, at that point in time you will be able to report as to each defendant whether they are guilty or not guilty of the conspiracy.

Congress has seen fit to make that a separate crime from the other crimes which are contained in the means which I have just described to you, and so that requires a special verdict, while on Count No. 10 your finding will be either guilt or innocence on that one.

The statutes themselves concerning mail fraud, SEC fraud and interstate transportation of forged securities are called substantive offenses because they violate the substance of the law which has been passed by Congress.

So that after you get through considering whether or not there was a conspiracy, you will then consider whether or not they have violated these other laws.

The first law you are concerned with as far as the substantive count is concerned is the mail fraud charge, which is contained in Counts 2 and 3, and they are exactly alike. The only thing that is different are dates, and some names, but the substance of the law is exactly alike, and these are three elements which must be proven in order to sustain a verdict on mail fraud.

No. 1, this is a very short description of it;

I will amplify it when we come to the end of the case and I will give you the elements at that time in full. For the purpose of this discussion I am shortcutting some of the phrases in here. But for a mail fraud charge there must be a scheme or artifice to defraud; there must be a mailing, and there must be conduct on the part of the defendant that's unlawful, knowing and wilful. And you will make a determination as to each defendant on that and as to each count separately.

Then comes Counts No. 4 and 5, and they are labeled 4 and 5, and you will see them when you get inside, and here again the elements are a scheme or artifice to defraud, and then an offer -- and I put it over here (indicating) because I couldn't fit it all in there -- offer or sale plus a scheme to defraud or to obtain money by means of untrue statements of a material fact - that is the second element in the Securities and Exchange fraud counts - and, lastly, that the defendant must have acted unlawfully, knowingly and wilfully.

Now, the last counts are 6 through 9, and the elements on that count are, one, that there must be forged securities; that they must travel in interstate transportation, and that the defendant must act unlawfully, knowingly and wilfully.

Now, why did I make my remark about the lawyers before I showed you this? Because they have stripped this case down to the point where what they are actually saying is the issue in the case, not what I say but what they have said is the issue in the case, No. 3 (encircling on blackboard); and I am referring to the mail fraud, securities fraud and interstate transportation of forged securities.

And this is also true as far as the conspiracy, because in the conspiracy there must be an agreement and an overt act, which at that point amounts to a conspiracy, and then anyone who is in it unlawfully, knowingly and wilfully and participates in it, then becomes guilty of conspiracy; and here again it is a third element that the lawyers are talking about (indicating).

So what they are saying to you is, the other portions in this case in a sense we are not quarreling with. That doesn't mean you mustn't find those elements, because if you find, for example, that there was really no mailing, and really no scheme, or the were really no forged securities involved, then you would have to acquit. But the lawyers have directed your attention to the fact that the essence, the crux, the number of this case is No. 3 in each one of these charges that are here,

and you will keep that in mind as we go along.

And that also prompts the remark and the thought -- excuse me a minute while I resume the bench (returning to bench).

As we sit here and as we have sat here for the last number of days, there are areas of agreement between the parties, many areas. There is no question, for example, that there was a brokerage house; there is no question that there were forged securties; there is no question that there is evidence in the case that there were mailings; there is no question that some stock went from New York to Pennsylvania or whatever other place, Ohio, or other parts of the United States outside of New York. There is no question about that.

(Continued on next page.)

Where the questions and where your duties come in and where you must make a decision is on that number 3 item, did the defendants participate in this unlawfully, knowingly and wilfully?

The Government says the evidence indicates they did, beyond a reasonable doubt. The defendants say that isn't so. So you will have to make a judgment on the totality of the case as to where the truth lies.

Since there is this question of fact in all of these areas and in all of these charges, you have been selected as jurors and all questions of fact in this case are decided by you, not by the lawyers nor by the Court -- that is not our function, that is your function -- and included in that function is the fact that you are judges of the credibility of any witness who has appeared here and you are also the final judges as to the facts in the case. So keep that in mind.

On questions of law, you must accept the law from the Court and apply it to the facts as you see them.

The case started by the grand jury indicting these defendants, and I have already indicated to you that that is a mere accusation.

The defendants then came in and pleaded not guilty, and that puts into issue every material fact in

rm ja 2

these indictments, and that puts into issue the areas in which you must make a judgment.

You must find where the truth lies in these areas.

A defendant in a criminal case is presumed by law to be innocent, and that presumption remains with him throughout the trial unless and until he is proven guilty of the crime charged by credible evidence beyond a reasonable doubt.

The burden of proving the defendant guilty beyond a reasonable doubt rests upon the Government and this burden never shifts throughout the trial.

The law does not require the defendant to prove his innocence or to produce any evidence. He may rely upon evidence brought out on cross-examination of witnesses for the Government.

If the Government fails to prove the defendant's guilt beyond a reasonable doubt, it is your obligation to acquit him.

Now, the tool used in order to present a position in a lawsuit is called evidence, and evidence can be described in a number of ways, and I am going to describe it in three different ways.

The first way I will describe is quantitatively

rm ja 3

and qualitatively. Qualitatively it means credible evidence, which is simply a word which means credible, believable evidence. That is what "credible" means, believable.

The quantitativeness is beyond a reasonable doubt. You must be convinced beyond a reasonable doubt before you can convict either one of these defendants on any of these charges.

A reasonable doubt means a doubt that is based on reason and must be a substantial rather than a speculative doubt, it must be sufficient to cause a reasonably prudent person to hesitate to act in the more important affairs of his life.

Another way of defining evidence is in the following ashion: It includes, number one, the testimony of the witnesses who come here, take an oath and swear to you what they have learned by the use of their senses. It includes exhibits in the case, and there are a number of exhibits in the case. It also includes any stipulations which were entered into between the parties, any agreements that they made during the course of the trial.

In this particular case, there is also grand jury testimony which has been introduced into this case as well as an affidavit which was given to Mr. BErkson, and

that, in sum and substance, is the way the evidence is divided in this way.

Another division of evidence is what is called direct evidence and circumstantial evidence.

Direct evidence is the testimony of one who asserts actual knowledge of the fact, such as an eyewitness. Circumstantial evidence is a proof of a chain of facts and circumstances indicating the guilt or the innocence of the defendant.

The law makes no distinction between the weight to be given either to direct or circumstantial evidence, it requires only that you, after weighing all of the evidence, are convinced of the defendant's guilt beyond a reasonable doubt before he may be convicted.

An example of how you apply circumstantial evidence could be an incident of, say, a classroom of blind boys are brought to a zoo and how they bring them around and let them touch the animals and walk around with them -- I don't know, I have grandchilren, but I have not taken them there yet -- so the blind children are all around this particular animal, and one little fellow goes up and he takes a feel, another little fellow goes up alongside of him and feels something, and another fellow goes over and feels something else, and the fourth little fellow goes

over and feels something else, four little boys, and the person that is with them says to them, after they gather together again, "What was it?"

The one little boy says, "Well, I got a hold of a whip."

The second little boy says, "I got hold of the trunk of a tree."

The third little boy says, "I got hold of a stick with a point on it."

And the fourth one says, "Well, I had something that is like a hose."

Well, at what point do you know that is an elephant? One little boy took him by the tail and felt what he thought was a whip, he couldn't describe it as an elephant.

So in considering the number of things and the kinds of things that lead you to a conclusion, this is similar to how you apply circumstantial evidence. It is not only the number of things that are involved that lead you to a conclusion, but it is the quality of the evidence.

Certainly the boy with the whip in his hand, you wouldn't take his judgment as to what he saw, even though he might happen to guess it was an elephant, but when you start to add them up and analyze them, you start

through circumstantial evidence to form a judgment which is a valid judgment.

Of course in this case you must be convinced beyond a reasonable doubt as the rule clearly states, before you can apply what you found out through circumstantial evidence.

In order to determine what evidence is so that you can apply it to the case, it is important to know what it is not, because you must exclude certain things, and the first thing I would call your attention to is the indictment. The only evidence that is is that a grand jury acted, but further than that, that is ll. It resulted in an accusation and no trial is held there; the trial is being held now, and you make a judgment in this case, and this indictment can't help you as far as the facts are concerned; you must find the facts from the witnesses as produced in the courtroom, and the other evidence as well as the law given to you by the judge.

Secondly, questions which were asked. Some of the questions asked contained facts in them and an objection was made, and the Court sustained the objection.

You may not assume the facts stated in the question have been proven at that point. You can only accept those facts when they are proven before you by way

rm ja 7

of witnesses or an exhibit, or otherwise, during the course of the trial.

The matters which have been stricken, and on occasion a lawyer would say, "I object to that, your Honor, and I ask it be stricken," and I have done that, and in those matters you may not consider the matters that were stricken unless they are proved at a later time. Further than that, you may not consider any remarks made during the course of the trial by the lawyers between themselves or with the Court.

There is a very simple reason for that. We were not sworn and are not witnesses in the case, so that that was not testimony, that was simply colloquy between the lawyers and the Court or between the lawyers themselves.

The next area we come to is the evaluation of the testimony. How do you evaluate the testimony that comes into the record? It would be easier if we had some sort of mechanical or electronic device for arriving at truth by putting cards in a machine or something like that, but we can't. You have to do the same thing juries have done for hundreds of years.

The first area I would call your attention to is the demeanor of the witness. You should look at the witness, observe his behavior, and in weighing the testimony

of each witness you should consider his relationship to the Government or to the defendant, the witness' interest, if any, in the outcome of the case, his manner of testifying, his candor, frankness, his intelligence, and the extent to which he has either been corroborated or contradicted, if it is the fact, by any other credible evidence you have here.

As one of the lawyers said during the course of the argument to you, you do not leave your common sense outside of the jury room, you carry your common sense into the jury room and you use that same fine discernment in determining the facts in this case as you do in everyday life in matters of great importance to you.

You notice in that part of the law I just gave you, I mentioned interest. The witnesses in this case could be divided roughly, and I simply put them in columns -- the people in the cage, and they were four in number, what is their interest in this proceeding at this point? You will analyze their testimony in the light of their interest.

Then there were fifteen people who came here and said they gave the stock, and then the stock was transferred either by way of forgery or without their authority. There were fifteen of those persons. In the light of their interest, you will analyze their

testimony.

Then there were the other people who dealt with them, I think they were brokers in a way, I think Schreiber was, in any event, but Schreiber and Katz, you remember the dealings they had in this case, and you remember their background and interest in determining the credibility of their testimony.

Pilpel was the man from the NASD, which is the group which is their own private way of policing the industry. It is not an official agency. Essentially what he did was bring a record here and he didn't analyze it or anything else.

Then there was the lawyer, Allan Salovin, and he represented Bloch and Lipshutz, and in the light of his employment, and what-not, you can analyze his testimony.

Then there was the father of the defendant, Martin Berkson, and you analyze his testifmony in the light of his relationship to his son.

Then there was the secretary in the office, Pat May. You will analyze her testimony in the light of any possible interest that you may find there.

Lastly, there was the Government witness, Mr. Soffler, who simply presented a piece of paper, period, and that was it.

We get into an area which indicates how you can analyze testimony in a very important area which has been discussed by all lawyers in this case, because I think it is really also the essence of the case, in a sense, and that is, if a witnss has falsely testified to a material fact, you must disregard the part of the testimony which you believe to be false, and you may disregard his entire testimony.

In order to explain how that works to you, there are a number of women on the jury, and suppose, for the sake of arguments, you are making toast, and the toastmaker doesn't work completely right, keeps it in a little longer than it should and it burns. When you take the piece of toast out and look at it, you won't throw away the whole piece of bread if it is not entirely burned, you just scrape off the burned part and eat the rest of it.

That is how the rule applies when you accept part of the testimony and reject part of it. If you put a bad egg in an omelet, no one is going to eat that and you throw out the whole omelet, and that is the way it works if you don't want to accept any part of that person's testimony.

All these things I talked to you about, about how you evaluate the evidence, continue on, and the next area

is, for example, the fact that these defendants did not take the stand.

Well, the fact that these defendants did not take the stand may not be used against them in any way whatsoever. They have a right not to take the stand, and you may not draw any presumption or inference of guilt from their failure to take the stand.

In reference to Gallentine, here again we are still talking about evaluating testimony, and Gallentine, of course, told you a number of things which puts him in the category where his evidence must be considered in a certain fashion, according to the law.

Number one, he is a defendant in the case.

Number two, he was convicted of a crime, a felony.

Number three, if you find that he voluntarily lent himself to the forgeries and making of the forgeries in this case, he would be an accomplice.

Number four, you might find that he perjured himself.

All of these descriptions of him result in the fact that his testimony must be scrutinized in a certain way, as an accomplice, and an accomplice is one who voluntarily participates in the commission or planning of a crime.

If you believe Gallentine directly participated as an accomplice in the offense charged, his testimony should be closely examined with great care.

If you believe the testimony of Gallentine to be true beyond a reasonable doubt, that testimony is sufficient to convict the defendant even though it is not corroborated by any other evidence.

Of course, the Government claims here that Gallentine's testimony is corroborated and he went to great lengths, both in his original summation and in some remarks he made later, to corroborate that. I will not amplify on that.

As an informer, which in a sense he is because he did come forth and give information to the Government, and, in fact, testified to it, and he indicated to you why he did that, he indicated that he made a bargain with the Government that he would be sentenced in a certain fashion and that certain counts would be dismissed against him, and you will keep that in mind in examining his testimony, because, there again, that might influence his testimony, and you will have to make a judgment as to how much it did, if in fact it influenced it at all.

In the other two areas I spoke to you about, the rules are practically the same, and if you boil it all

down to what it says, it is that you must examine his testimony closely and scrutinze it with care.

In going over this indictment, and when you see the indictment, you will see there are a number of people named in this indictment, that there are four defendants, Hyman, who is not here, Gallentine, who has pleaded guilty, and these two defendants on trial.

Where two or more persons are charged with the commission of a crime, the guilt of one defendant may be established without proof that all the defendants perpetrated every act constituting the crime charged.

However, you must give separate consideration to each individual defendant and to each separate charge against him.

Each defendant is entitled to have his case determined from his own conduct and from the evidence which is applicable to him. The fact that a co-defendant pleads guilty, and in this Gallentine did, is not evidence of the guilt of the other defendants or that the crime charged in the indictment was committed.

The guilt or the innocence of the defendants still on trial must be determined by you solely by the evidence introduced in the trial of this case.

There were certain charts introduced into

evidence, and Mr. Brodsky has used it, as well as Mr. Lowe, and those charts are simply admitted on the agreement of both sides that what they represent is what the evidence indicates in the case.

If in looking at the charts you find there is part of that chart which doesn't coincide with the evidence as you find it, you will disregard that portion of the chart.

The next area I will talk to you about is so-called inconsistent statements. There has been much said of that by both sides in this case, as far as Gallentine is concerned.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony.

The earlier contradictory statements are admissible not only to impeach the credibility of the witness but also to establish the truth of the statements made at that time.

It is your province to determine the credibility, if any, to be given to the testimony of the witnesses who have been impeached.

In essence, what that means is this, if you find, for example, that Gallentine was saying the truth

when he appeared before the grand jury, you may consider that as evidence in the case.

On the other hand, if you find that he was not, then you will, of course, disregard it or compare it to other statements which were made which indicate that the other statements are true. Those are the ones where he said Berkson knew nothing about it.

So that in this area you are free as the birds, you are not bound by the thoughts of any of the lawyers. You consider the evidence and you make your own judgment, and there you will find yourself where you feel the truth lies.

Something has been said about motive. Of course, I think the discussion by both lawyers was the expression of the law. They made different use of that, but the expression was the same. You see, the Government doesn't have to prove motive, it is not an element of the crime. You don't find it on the chart that I drew for you, the skeleton, where an element appears of motive.

The only reason motive can help you is that it is a circumstances you may consider in determining where the truth lies in the case, and that is its sole function, and that is having motive or no motive. It is only a circumstance to be considered by you in making a determination

as to where the truth lies.

Now, the conspiracy one, number 10, the first one I have on top, I will describe that in a few minutes, but in that particular case essentially what has to be proven is that there was an agreement and that an overt act was committed, and from that point on anybody who joins it and participates in it is guilty of conspiracy.

As far as the substantive charges are concerned, the rest of them, there are two ways in which you consider whether or not the defendant is guilty, in addition to considering the evidence, and there are two aspects you must consider. They are contained in a law passed by Congress, Title 18, Section 2, which is enumerated in the indictment. when you see it, and that reads as follows, and we are talking about the substantive charges now, which are 2 through 9 inclusive -- general provision of the statute, subdivision 2, "Principals," subdivision (a) of 2:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

"(b) Whoever wilfully causes an act to be done which is directly performed by him or another which would be an offense against the United States is punishable as a principal."

The Government position is that in Rind's case, for example, if you believe Gallentine beyond a reasonable doubt, he was commanded and ordered to do these forgeries. That is the Government's position. The defendant's position is 180 degrees opposite that, and that is that all he was doing was putting together sales and he didn't ever tell Gallentine to forge.

Of course, if you find that the Government's position is tenable, then these particular principles apply which I have just read to you.

In addition to that, there is another way in which you can apply the law of conspiracy to the substantive counts, 2 through 9 inclusive, and that is this: I will describe this further when I get into conspiracy, but for this purpose here, a conspiracy can be considered a partnership in crime, and, therefore, if you are in fact a member of the conspiracy, then you are responsible for what your partners do, whether you know it or you don't know it.

So if you find thatthe defendant that you are considering at the time was a member of the conspiracy, then you may also find when you consider the other counts if they were committed in your opinion beyond a reasonable doubt, you may also find he is also guilty of those charges

because they were done by other partners who were in the partnership with him for which he is responsible, and that is provided they were done during the life of the conspiracy and in furtherance of the conspiracy.

(Continued on the next page)

I now will define some of the terms that appear in the indictment so that you can understand what they mean.

Three of the terms that appear all the time are the ones that are marked with a circle around "3" there - "unlawful," "knowing," and "wilful."

"Unlawfully" in this particular case means against the sections which have been labeled mail fraud, SEC fraud, and the interstate transportation of forged securities. Those are the federal laws which were contemplated by the agreement, and that's the charge, and that is the matter in which the particular defendant must act in violation of those laws.

"Wilfully" means to act knowingly and deliberately with a bad motive of purpose, but it is not necessary that the defendant know that he is breaking any particular law by number. It is what the Romans call the mens rea, or the evil mind.

"Knowingly" means to act voluntarily or intentionally and not because of mistake, inadvertence or accident or some other innocent reason.

In determining whether a defendant acted knowingly you may consider whether the defendant deliberately closed his eyes in order to deliberately avoid knowing

what otherwise would have been obvious to him.

All these crimes charged in this indictment requires specific intent. Specific intent, as the term implies, means more than a general intent to commit an act. To establish specific intent the Government must prove that the defendant knowingly did an act which the law forbids, and he purposely intended to violate the law.

So now having given you the preliminary discussion on the law, as to what evidence is and what evidence is not, and how you evaluate it and various definitions, we now come to the indictment itself:

Now, if you will look at that blackboard you will see that Count 10 of the indictment charges the defendants Berkson, Gallentine, Hyman and Rind and others unknown to have conspired to violate certain sections of the law as indicated in the counts below, namely, 2 and 3, 4 and 5, and 6 through 9. The first, 2 and 3, are mail fraud violations; the next two, 4 and 5, are SEC violations, and the last one is violation of the inter-state transportation of forged securities.

To prove the conspiracy here the evidence must show beyond a reasonable doubt, to start with, that the conspiracy existed from about June of 1970 until the filing of the indictment, which is June 19, 1975.

Now, it doesn't have to cover that whole period. The evidence here starts, I think, in August, if I am not mistaken, but it says between the period of June 6, 1970 and June 19, 1975, so the months of August and September and February and April are within that period.

Then there are three elements which the Government must prove. Do you see that there? And I will indicate to you what those three elements are:

The first is that the parties agree to do any one or more or all of the following:

To violate the mail fraud section, as I will explain to you in connection with Counts 2 and 3; to violate the securities law, which I will explain to you when we get to Counts 4 and 5, or to violate the law prohibiting interstate transportation of forged securities, which I will explain to you when we get to Counts 6 through 9 inclusive. So essentially there must have been that agreement. That's the first thing.

Secondly, that at least one of the conspirators committed at least one overt act alleged in that indictment, and when you look at the indictment you will see that there are a number of overt acts alleged. The Government doesn't have to prove all of them. As a matter of fact, the Government need prove but one, and if you find

ss4

that one has been proven to your satisfaction by credible evidence beyond a reasonable doubt, that would be sufficient.

The overt acts are contained, of course, in Count 10, and they are numbered 1 through 5. I will read just the first one to give you an idea what an overt act sounds like.

"1. During the month of August, 1970, the defendants Rind and Gallentine had a conversation in which they discussed illegally selling customers' securities for the benefit of Packer, Wilbur."

And then there are four others named after that.

In order to complete the conspiracy you must be satisfied by credible evidence beyond a reasonable doubt that at least one of those overt acts was committed.

If you find that the conspiracy as charged in the indictment did exist, you must focus your attention next and separately on each individual to determine whether the defendant knowingly and wilfully became a member of the conspiracy.

Of course, if you find that no conspiracy existed, that would end the matter as far as Count 10 is concerned, and then you would have to go into the other

ss5

substantive counts which follow in order to find out what the verdict would be there.

To determine whether a defendant was a member of the conspiracy you ask yourself whether a particular defendant acted wilfully and with knowledge that his acts were an integral part of the alleged unlawful enterprise, and helped to carry it forward as an associate in it with a desire to see it succeed.

You must find that the defendant knew what the unlawful purpose was and had a stake or personal interest in it as distinguished from acting exclusively on its own.

It is not necessary that a defendant be fully informed as to the details or the full scope of the conspiracy in order to justify an inference of knowledge on his part; nor need he even know all the conspirators.

The guilt of a conspirator is not measured by the extent or duration of his participation; even if he participated to a degree more limited than that of the other co-conspirators, or in a subordinate or minor way relatively, he is equally culpable as long as he was, in fact, a conspirator.

The scope of each defendant's agreement must be determined individually from what was proven as to that

ss6

defendant.

In order for a defendant to be held for joining others in a conspiracy, he must in some sense promote their venture himself and make it his own with a desire to see it succeed. To do this, you must determine just what each conspirator is promoting and making his own. A single act may be the basis for drawing an actor within the ambit of the conspiracy, but since conviction of conspiracy requires an intent to participate in the unlawful enterprise, the single act must be such that one may reasonably infer from it that he had such an intent.

I want to caution you that mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient.

Merely because a friendship existed between alleged co-conspirators, you cannot find any defendant guilty merely because of that association or friendship.

One does not become a member of the conspiracy by rendering services to the conspirators if he does not know of the existence of the conspiracy.

Acts done innocently, although they tend to further the object of the conspiracy will not render their authora member of the conspiracy. There must be a

wilful participation in the conspiracy with the intent to further the common purpose or design. What is necessary is that the defendant participate with the knowledge of at least some of the purposes, and with the intent to aid in the accomplishment of these unlawful ends. In short, a person becomes a member of the conspiracy by associating himself, even though informally, with the common plan or scheme, knowing the central aim or purpose, and intending to aid in bringing about the success of such plan or scheme.

All conspirators or alleged conspirators need not have originally or simultaneously have conceived the idea of the conspiracy, nor participated in its inception. In order to be guilty, one who comes in later with knowledge of the means and purposes, although not necessarily of the details, and who intentionally cooperates in a common effort to gain the unlawful result may become a member of the conspiracy equally with the alleged conspirators, and intending to aid in bringing about the success of the plan or scheme, and he is legally responsible, for the purposes of the conspiracy count, for all the acts done by any of the other members before or after in furtherance of the common purpose like any other partner in a partnership agreement.

Once you are satisfied beyond a reasonable doubt that a conspiracy existed, and that a particular defendant was a member, then the acts and declarations of the other persons whom you also find were members of the conspiracy, made by such conspirators during its existence and in furtherance of the objects, are considered the acts and declarations of all the other members of the conspiracy even though they were not present.

That concludes the discussion on the conspiracy charge. You will consider all the evidence in the case and determine whether or not those elements have been satisfied by the Government. If you find that they have by credible evidence beyond a reasonable doubt you will convict the particular defendant you have been considering at that time. If you find that the Government has failed to prove any one or more or all of those elements, then it is your obligation to acquit that particular defendant. You will consider each defendant separately for this purpose.

We then come to Counts 2 and 3, and the law in this area reads as follows:

"Whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by false or fraudulent pretenses,

ss9

representations or promises for the purpose of executing such scheme or artifice, or attempting to do so, places in the post office or authorized depository for mail matter any matter or thing whatever to be sent or delivered by postal services, or takes or receives therefrom any such matter or thing, or knowingly causes to be delivered by mail, according to the directions thereon, any such matter or thing, commits this particular crime."

What that, in essence, says is that in order to find the guilt of the particular defendant you are discussing at this particular time guilty of Counts 2 or 3, you must find that the Government has proved the following essential elements beyond a reasonable doubt, and you will consider each defendant separately and each charge separately on these two counts:

First, that during the time period alleged in the indictment the defendant devised or intended to devise a scheme or artifice to defraud or obtain money or property by means of false and fraudulent pretenses, representations or promises; or he aided and abetted another person who devised or intended to devise such a scheme or artifice.

Second, that pursuant to such scheme the

ss10

defendant used the mail or caused to be used, or aided and abetted another person who used the mails or caused them to be used;

And, lastly, that the defendant you are considering devised or became a party to such scheme or artifice knowingly, wilfully, with knowledge of the fraudulent nature and with an attempt to defraud.

Now, in reference to the use of the mail which is discussed in those particular elements:

The use of the mail in furtherance of a scheme to defraud is an essential part of the crime of mail fraud.

It is not necessary that the use of the mail be contemplated by the scheme or that the defendant does any actual mailing or intend that the mail be used. It is sufficient to establish this element of the crime if the mails were, in fact, used to carry out the scheme, and that he used the mail as reasonably foreseeable. The mail matter need not disclose on its face any fraudulent representation or purpose but need only be intended to assist in carrying out the scheme to defraud.

Now, the definition of a scheme to defraud is as follows:

ssll

Under the mail fraud statute it means some plan to procure money or property by means of false pretenses or representations calculated to deceive persons of ordinary prudence.

The Government must prove that the defendant participated in such a plan, and that such representations were made by him or his agents knowing they were false and with intent to defraud. It is not necessary, however, that any person was actually defrauded by the scheme; nor is it necessary that the Government prove all of the pretenses, representations and acts charged in the indictment. It is essential only that one or more of them be proven to show the existence of the scheme.

The gist of the offense charged in this particular case is the wilful use of the mails in carrying out or attempting to carry out a scheme to defraud as charged, and not the scheme itself. So the success or the failure of the scheme is immaterial, and the fact that there were shortages, and so forth, in this bank account, and that this girl allowed her company to use her for the purpose of washing out some of this money, and the other ways involved in this area, as far as Gallentine's checks are concerned, too, that can't help you determine

ss12

whether or not this federal crime was committed. It was allowed only for the purpose as I indicated at the time, and which the lawyers have fully discussed with you on the question of motive, and you will keep that in mind.

Under the mail fraud statute, each separate use of the mail in furtherance of the scheme to defraud constitutes a separate offense, and for that reason there are two counts there because there are two alleged mailings.

Now, in reference to 4 and 5, which are the next two counts, the security fraud:

The charge is that the defendants committed substantive violations ofthe antifraud provision of the 1933 Act.

The substance of this section is that it is unlawful in the offer or sale or securities to employ the mail or other means of interstate commerce or interstate communication in furtherance of any fraudulent or deceitful scheme, practice or course of business, or any attempt to obtain money through material misrepresentations or through commissions of a material fact which would be necessary to make the information given not misleading. Such conduct is declared to be unlawful by the Federal

ss13

Security Act of 1933.

In order to prove this charge there are three elements that must be proven by the Government beyond a reasonable doubt:

First, that a person in connection with the offer or sale of securities engaged in a scheme to defraud or obtain money and property by means of untrue statements of material fact;

Second: That the person used or caused to be used means or instruments of transportation or communication in interstate commerce or of the mails;

Third: That the person did so wilfully and knowingly and unlawfully.

Now, a scheme to defraud or an artifice to defraud is described as follows:

The language describing the basic element of this offense is almost self-explanatory, and the term "scheme or artifice to defraud" has the same meaning as I explained with respect to the mail fraud count.

Thus, as I have explained with respect to the earlier counts, a scheme or artifice to defraud is a plan to obtain money or property or some advantage of value by trick or device.

In this case the Government contends that by

using a customer's stock certificates as if the certificates belonged to Packer, Wilbur, the defendants were misrepresenting the true ownership of the stock certificates.

Counts 6 through 9, which are the last counts that are in this indictment, charge the defendants with a violation of Title 18, Section 2314, which reads as follows insofar as it applies to this case:

"Whoever with unlawful or fraudulent intent transports in interstate commerce any falsely made, forged, altered or counterfeit securities knowing the same to have been falsely made, forged, altered or counterfeited, commits a crime."

So that in order to find the defendants guilty of the crimes charged in Counts 6 through 9 inclusive you must find all of the following elements have been proved by credible evidence beyond a reasonable doubt:

First, that the defendant tranported or caused to be transported in interstate commerce the stock certificates referred to in those counts.

Second, that the stock certificates had been forged; that the stock transfer certificate power was forged; third, that the defendant knew that the stock transfer power was forged and that his intention was to

act unlawfully or fraudulently.

The first element of the offense charged is that the particular stock certificates were transported or caused to be transported in interstate commerce. Interstate commerce is commerce between one state and another; for example, between New York and New Jersey or between New York and Ohio.

Actual knowledge that a stock certificate will be transported in interstate commerce is not required to sustain a conviction for the events charged here. It is enough if the defendant agrees to participate in a scheme which by its nature involves transportation in interstate commerce, and that such transportation actually took place.

The second element requires that the stock certificate or stock transfer power attached thereto was actually forged.

A person signing a check in the name of another commits the second element, which would be a forgery. He commits a forgery by signing in the name of another, and unless he has authority from the other person to do so, or has a good faith belief that he had such authority, it would be a forgery.

If you find beyond a reasonable doubt that the

customer's certificate on the stock transfer power were forged, that is sufficient to establish the second element.

The third element of the offense relates to the knowledge and the intent of the defendant.

The Government must prove beyond a reasonable doubt that the defendant knew that the stock transfer power was forged and that his intention was unlawful or fraudulent.

The Government does not have to prove who forged the document or that the defendant himself did it. In this particular case, of course, we have evidence from the witnesses who came here and told you that they forged these documents, and so in that particular respect you will remember that testimony. In fact, it would appear here that neither of the defendants were charged with having falsified the signatures of the customers. As a matter of fact, the evidence is contrarywise, that it was the people in the cage who did it.

The Government does have to prove beyond a reasonable doubt that the defendant knew that the stock transfer power was forged, and that he acted with an unlawful or fraudulent intent; that is to say, with a bad motive.

Motive and intent exist in the mind. Since

it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and determine from such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

That concludes the discussion of the nine counts that are in the indictment, and now in closing I say to you that sympathy and bias have no part in this case. You are to decide this case without fear or favor. Vote in accordance with your conscience as you see the facts, and in discussing this case you may not discuss what possible punishment there is even though you know what it is because it has been testified to during the course of the trial. It is of no concern, however, of yourse because you do not enter into that aspect of the case, and it cannot help you in determining the facts.

The verdicts in this case must be unanimous, and as to each count it must be either guilty or not guilty, and you are to report a verdict as to each defendant.

separately just as you have decided each case separately.

Discuss the case amongst yourselves, and if your recollections differ on any part of the evidence and you want to hear what was actually testified to during the course of the trial, our reporter will make that available to you if you will tell us the name of the witness you are talking about and what particular portion of the testimony you are interested in, direct examination or cross-examination or whatever. In other words, pinpoint as much as possible.

If you have any question that you want to direct to the Court you may do so at any time during your deliberations, and you do that through your forelady who will give the note to the marshal, and the marshal will then deliver it to me.

Now there is one last time when I have to talk to the lawyers, and if you will excuse me at this time we will do that now, and then we will conclude.

(At the side bar.)

THE COURT: First, exceptions by Berkson?

MR. BRODSKY: Yes.

Judge, my position here is that with respect to all of the counts the Government has not made out a prima facie case, but without taking back from that, in the last

trial you charged the jury with respect to Berkson that only if you found the defendant guilty beyond a reasonable doubt on the conspiracy count could they also --

THE COURT: Yes, at that time I had analyzed the evidence, and it seems to me that that was the case; but on further proof here during the course of this trial, some other things were brought out which caused me to feel that that was not so in the present state of this case.

MR. BRODKSY: Well, I just wanted to be sure your Honor considered it.

THE COURT: You may have an exception.

As a matter of fact, no argument was made to the jury that I am aware of in this particular area by any of the lawyers, whether they were aiding or abetting, or whether it was Pinkerton or whatever.

MR. BRODSKY: That would be a matter of law.

THE COURT: Well, I say you didn't argue even factually in that area. I mean, your argument was directed to -- well, it would take a long time to go into that, but it seemed to me that relatively it made no difference to your argument no matter how I ruled on this, your argument would have been the sme. It wouldn't have changed your argument, in other words.

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MR. BRODSKY: Probably that's true.

THE COURT: Well, in any event, you have got an exception.

MR. BRODSKY: I didn't say I was going to change my argument.

Now, your Honor said that Gallentine's testimony would be sufficient to convict alone --

THE COURT: Talk a little louder.

MR. BRODSKY: I am sorry, I didn't want to be heard by the jury.

Your Honor said that Gallentine's testimony would be sufficient to convict alone, and I respectfully except to that portion of your Honor's charge.

THE COURT: The exception is noted.

MR. BRODSKY: I don't believe your Honor's charge was sufficient on the subject of Gallentine's motivation to help himself in this case. Your Honor did say, consider everybody's interest, but I don't think you spelled that out sufficiently.

THE COURT: I thought I spelled out that he was an accomplice, that he was an informer, that he was convicted of a crime, that he was a possible perjurer; what more do you want?

MR. ANOLIK: That he was looking for a light

sentence.

THE COURT: I did say that he made a bargain with the Government, and for them to consider his bargain with the Government.

In any event, I note your exception.

I couldn't think of any more names to call him.

MR. LOWE: I could.

THE COURT: I really mean it.

MR. BRODSKY: You did say to the jury, again, that his statements in the grand jury could be used for the truth. Of course I have already made that argument to the jury.

THE COURT: Your exception is noted.

MR. BRODSKY: I also object to the closing the eyes to the obvious charge. I don't think it was appropriate in this particular case.

THE COURT: I note your exception.

MR. BRODSKY: I also object to your Honor's charge to the effect that you said that with respect to the substantive counts, if they were guilty of conspiracy that they also could be guilty of the substantive counts, assuming that they were performed in furtherance of the conspiracy, whether or not a defendant knew that the substantive counts were being committed.

I except to that part of the charge.

THE COURT: You mean Pinkerton, in effect?

MR. BRODSKY: I'm sorry, Judge, but I don't know whether I can characterize it as Pinkerton or not. I don't want to characterize it that way.

THE COURT: All right, for whatever it is worth. It is not pinpointed enough in my mind to know what area you are talking about.

MR. BRODSKY: I can't characterize it as Pinkerton. My recollection is that what your Honor said is this:

If you find the defendant was guilty of the conspiracy, and that if any of the substantive counts were committed in furtherance of that conspiracy, the defendant would be guilty of the substantive count.

THE COURT: That's Pinkerton. I characterize it as Pinkerton.

MR. BRODSKY: Well, if you want to characterize it as Pinkerton, fine. I except to it.

THE COURT: You except to that.

MR. BRODSKY: Yes.

THE COURT: (Addressing Mr. Anolik) And you join in all of these?

MR. ANOLIK: I join in all of these.

Your Honor, I don't recall -- I could have missed it -- I don't recall your Honor in discussing the evidence, you said they can consider the evidence, but I don't think you said lack of evidence.

THE COURT: I don't think I did either.

MR. ANOLIK: I think you should. That is part of the Second Circuit's requirement.

THE COURT: Well, I am not going to highlight that at this point. You have an exception.

MR. ANOLIK: Your Honor, I prognosticated that your Honor would charge it, and I think it is an accepted charge in this Circuit.

THE COURT: Well, at this point in time, in view of the fact --

MR. LOWE: Judge, I would go along with telling the jury that I think it may be error not to.

THE COURT: It may be what?

MR LOWE: It's possible it might be error not to specifically state that a reasonable doubt could be based on lack of evidence. I think that's a requirement.

THE COURT: I am not aware of it, and if you can show it to me I would be interested.

MR. ANOLIK: At this time I can't. I would have to go back to my office.

MR. LOWE: I don't have a case off the top of my head, but I think it is usually included.

THE COURT: Do you know why it is usually done? Because Judge Weinstein said it at one time. It is not in LaBuy and it is not in others.

Well, if you both agree that that should be done I will give reasonable doubt again and define it all over again and add that to it.

MR. ANOLIK: Yes, I think you should, your Honor.

THE COURT: All right?

MR. BRODSKY: I will join in that.

MR. LOWE: Judge, I have one request.

You may have covered it, but I thought you should tell the jury that any time they have any verdict, like if they decide on one defendant, or on some counts, that they can report a verdict before they have completed their full deliberations, if they have reached any verdict on any defendant on any count.

THE COURT: As I read that section it seems to say that the Judge doesn't initiate that, but if they come in for some reason he can put that thought in their minds. So that's what I will do in this case, unless a rereading of the section might convince me otherwise.

Rule 31 reads:

"If there are two or more defendants the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom they agree."

Then it goes on to say that if the jury can't agree with respect to all of the defendants, the defendants on whom they couldn't agree may be tried again.

So that would be read up until "as to whom they agree." The latter part wouldn't be read to them.

All right?

MR. LOWE: I have nothing else.

THE COURT: All right, reasonable doubt and then this part of the rules.

MR. LOWE: Right.

(End of side bar discussion.)

(In open court)

THE COURT: I have been asked by the lawyers to indicate to you again what the term "reasonable doubt" means.

A reasonable doubt means a doubt that is based upon reason and must be a substantial doubt rather than speculative doubt.

It may arise from the lack of evidence, and it must be such as is sufficient to cause a reasonably prudent person to hesitate to act in the more important affairs of his life.

What I added to that, in reference to what I said to you originally, is that it may also result from the lack of evidence, a reasonable doubt.

Also, I have been asked to read a rule of the court in reference to your verdict, and it reads as follows:

"If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed."

Mr. Horchler and Mr. Murray, I have to exclude you at this time. Under the statute I am obliged to excuse you because you do not enter into the deliberations

of the jury.

However, I do express the thanks of the Court for your service and appreciate what you have done so far. Thank you very much.

(Marshal sworn by the Clerk)

(At 3:32 p.m., the jury returned to the jury room)

THE COURT: Is there any objection if they call for the evidence to have the clerk of the court deliver it rather than have me come down again?

MR. ANOLIK: I have no objection your Honor.

MR. BORDSKY: I have no objection. I just want to see it before it goes in.

THE COURT: Before he takes anything in, he will show it to you.

MR. ANOLIK: The grand jury minutes are part of a whole book of minutes, your HOnor --

MR. LOWE: Only one portion thereof, that part of the two pages --

THE COURT: Only two pages were admitted, and then you said, Will you concede there is nothing in the other part of the minutes?" And he said, "Yes," or something to that effect. It was never marked in evidence.

Look at the minutes, you can find them. I

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didn't want to stop you, to knock you off your trend of thought, because you did it a couple of times, but I was under the definite impression that the only parts marked were the parts that were really read to the jury as part of the question.

MR. BRODSKY: I think that is right, too.

(Recess)

(At 4:00 p.m. a note was received from the jury.)

THE COURT: Did you look in the transcript to find the place we were talking about, about the grand jury testimony?

MR. ANOLIK: No, we didn't check that out.

THE COURT: Apparently they want all the documents, and we have to make a judgment now as to the fact that the only two pages that are allowable there are the ones that were marked or discussed.

MR. BRODSKY: I don't think they came in separately as an exhibit. They were read into the record.

THE COURT: All right, then --

MR. LOWE: They are not documents, in any event.

THE COURT: The note reads very funny, from the jury, Court's Exhibit 1.

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"May we have these -- see documents that were admitted for evidence?"

That is why I told you before I thought we ought to let them elect a foreman, but I think it says they want to see the documents that are in evidence.

MR. BRODSKY: It seems that way to me.

THE COURT: I will show the note to you.

MR. ANOLIK: I recall the colloquy you had with Mr. Brodsky at the time, your Honor, and he pointed out that the new rule admitting the introduction of grand jury minutes was unfair, because there are many questions that are loaded in the grand jury --

THE COURT: But I never took it.

MR. ANOLIK: It was not given a number, but I am sure it was t aken.

THE COURT: How could it be taken if it doesn't have a number?

MR. ANOLIK: Mr. Lowe before he summed up said he had to have a ruling on that.

THE COURT: It related only to the portion that was read.

MR. ANOLIK: That is what confused me.

THE COURT: There is no difficulty. I can call them in and ask them what they mean is that they

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want all the documents in evidence, and if they say yes, we simply send in the documents that are in evidence.

Bring in the jury.

(Note from jury marked Court Exhibit 1.)

(Jury present)

THE COURT: As I interpret the note, do you all the documents that are in evidence?

The way the note reads, is this, "May we have -- see documents that were admitted for evidence?"

THE FOREMAN: "These."

THE COURT: We will send in all the documents that were marked in evidence.

(The jury again retired to continue their deliberations.)

(At 4:55 p.m. a note was received from the jury.)

(Note from the jury marked Court Exhibit 2)

THE COURT: The jury wants some testimony read, and I am going to excuse them for the night and tell them we will do it tomorrow morning. We have to make a judgment on the grand jury testimony because they want that also read.

I will excuse them first and then rule on what portion of the grand jury testimony I will allow.

Bring them in, please.

(Jury present)

THE COURT: If you will just stand here, because we are going to adjourn until tomorrow morning -- I have a note from you which reads:

"May we have the testimony of Eleanor Melling and the grand jury testimony?"

We will suspend at this time. Please do not discuss the case at home or with anyone else and return tomorrow morning at ten o'clock, at which time we will have this testimony ready for you, and the first order of business will be that we will read this to you.

Do not discuss it now any longer until tomorrow morning and return tomorrow morning at ten o'clock.

(Jury left the courtroom.)

THE COURT: The note reads, "May we hear the testimony of Eleanor Melling and the grand jury testimony?"

As far as I can ascertain in my own mind now, the only portion of the grand jury testimony that is admissible and allowable at thispoint is the portion which was referred to during the course of the questioning.

What I would suggest is that the lawyers come to some conclusion as to that during the course of the evening and tomorrow morning I will rule on that.

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You look in the record and tell me what portion you think should be read to them, and tomorrow morning I will hear you and then I will rule on it.

My present impression is that it is just the pages referred to during the course of the questioning.

MR. ANOLIK: pages 381 --

THE COURT: I am not going to do it now. I want you to think about it overnight. Tomorrow morning I will rule on it, first thing.

MR. ANOLIK: Do you have copies of the record also, your Honor?

THE COURT: Yes.

MR. ANOLIK: I can show it to the clerk.

(Adjourned to Wednesday, June 9, 1976, at ten a.m.)

-oOo-

UNITED STATES OF AMERICA

vs. 75 Cr. 608

ROBERT BERKSON and
MAURICE RIND.

New York, June 9, 1976;
10.00 o'clock a.m.

(Trial resumed.)

- -

(In the courtroom - jury not present.)

THE COURT. So it is clear, in answer to the jury's question it is agreed that the Court follow the following course of conduct:

In reference to Eleanor Melling, that the Court direct the reporter to read page 254, line 16 to page 258, line 24.

Will you look at it and be satisfied that that is the portion.

Are those the right pages?

MR. ANOLIK: Yes.

MR. LOWE: Yes.

THE COURT: Now in reference to the witness Gallentine, pages 103, line 24 to page 105, line 7; and then page 222, line 6 through line 19.

All right, bring the jury in.

(At 10.05 a.m. the jury entered the courtroom.)

THE COURT: Good morning, member os the jury.

The Court is in receipt of a note which has been marked Court's Exhibit 5:

"May we have the testimony of Eleanor Melling."

The reporter is directed to read that portion of the testimony of Eleanor Melling which appears at page 254, line 16 to 258, line 24. That is the entire testimony.

(Testimony indicated above was read to the jury.)

THE COURT: Now the note goes on to read:

"And the grand jury testimony."

This requires a little discussion. When an exhibit is marked only for identification we may not send that in to you to the jury room because it was not received in evidence.

However, in answer to the question which you have put in regard to this testimony, some of the grand jury testimony is actually in evidence because it is part of a question and there are answers to it which were made

in the grand jury room, and we will read that portion of the grand jury testimony which was made part of the record by being asked here as part of the proceeding.

That grand jury testimony appears on page 103 starting with line 24 and goes to page 105, line 7.

And I direct the court reporter to read that to you.

(Portion of testimony indicated above read to jury.)

THE COURT: Now there is another portion of Gallentine's testimony which deals with the rest of the grand jury testimony, and that appears on page 222, line 6 through line 19, and that will be read to you by the court reporter.

(Portion of testimony indicated above read to jury.)

THE COURT: All right, that is in answer to your inquiry, and you may retire to deliberate.

(The jury returned to the jury room to resume deliberations.)

MR. ANOLIK: Judge, there is a judge across the street in the Supreme Court who would like me to appear, if possible, for about 15 minutes. Can I have your permission to do that?

THE COURT: Yes, but you will come right back?

MR. ANOLIK: Yes.

THE COURT: Can we go ahead if there is a request for an exhibit or something like that?

MR. ANOLIK: Yes. I would have no objection.

THE COURT: (Addressing defendant Rind) Is that all right?

(Defendant Rind nodded.)

MR. LOWE: Can we get Mr. Rind's consent?

THE COURT: Yes. I just asked him and he nodded his head in the affirmative.

We will wait at least 15 minutes to give you a chance to get back.

(Recess.)

(At 1.00 p.m. the Court declared a luncheon recess, the jury returning at 2.00 p.m.)

- -

(3.55 p.m. - in the courtroom, in the absence of the jury.)

THE COURT: The jury wants some instructions, so I am going to ask them to come in.

"May we hear the portion of the Judge's charge regarding conspiracy law, including the responsibility of co-conspirators for each other's acts.

"Is a co-conspirator responsible for actions committed by others prior to his joining the conspiracy?"

That, to me, is two questions.

The first portion asking for the Judge's charge, I will read that to them.

The second portion is a separate question, and I will discuss that at the side bar with the lawyers after I reply to the first question.

(Note marked Court's Ehibit 3.)

xx (The jury entered the courtroom.)

THE COURT: The Court has a request from the jury, Court's Exhibit 3 for identification.

"May we hear the portion of the Judge's charge regarding conspiracy law, including the responsibility of co-conspirators for each other's

acts."

I will answer that first.

Would you put that board over here where the jury can see it.

(Blackboard placed convenient for jury's inspection.)

THE COURT: Can you read that from there or do you want it brought closer?

THE FORELADY: That's all right.

THE COURT: I am now going to read from the record, starting at page 575, which starts the discussion of this particular count, line 13:

"Now, if you will look at the blackboard you will see that Count 10 of the indictment charges the defendants Berkson, Gallentine, Hyman and Rind and Rind and others unknown to have conspired to violate certain sections of the law as indicated in the counts below, namely, 2 and 3, 4 and 5, and 6 through 9. The first, 2 and 3, are mail fraud violations; the next two, 4 and 5, are SEC violations, and the last one is violation of the interstate transportation of forged securities.

"To prove the conspiracy here the evidence must show beyond a reasonable doubt, to start with, that

the conspiracy existed from about June of 1970 until the filing of the indictment, which is June 19, 1975.

"Now, it doesn't have to cover that whole period. The evidence here starts, I think, in August, if I I am not mistaken but it says between the period of June 6, 1970 and June 19, 1975, so the months of August and September and February and April are within that period.

"Then there are three elements which the Government must prove. Do you see that there?"

And there they are up there, the "agreement," "overt act," and "the defendant must unlawfully, knowingly and wilfully participate."

"And I will indicate to you what those three elements are:

"The first is that the parties agree to do any one or more or all of the following:

"1. To violate the mail fraud section, as I will explain to you in connection with Counts 2 and 3; to violate the securities law, which I will explain to you when we get to Counts 4 and 5, or to violate the law prohibiting interstate transportation of forged securities, which I will

explain to you when we get to Counts 6 through 9 inclusive. So essentially there must have been that agreement. That's the first thing.

"Secondly, that at least one of the conspirators committed at least one overt act alleged in that indictment, and when you look at the indictment you will see that there are a number of overt acts alleged. The Government doesn't have to prove all of them. As a matter of fact, the Government need prove but one, and if you find that one has been proven to your satisfaction by credible evidence beyond a reasonable doubt, that would be sufficient.

"The overt acts are contained, of course, in Count 10 and they are numbered 1 through 5. I will read just the first one to give you an idea what an overt acts sounds like.

"1. During the month of August, 1970, the defendants Rind and Gallentine had a conversation in which they discussed illegally selling customers' securities for the benefit of Packer, Wilbur.'

"And then there are four others named after that.

"In order to complete the conspiracy you must

be satisfied by credible evidence beyond a reasonable doubt that at least one of those overt acts was committed.

"If you find that the conspiracy as charged in the indictment did exist, you must focus your attention next and separately on each individual to determine whether the defendant knowingly and wilfully became a member of the conspiracy.

"Of course, if you find that no conspiracy existed, that would end the matter as far as Count 10 is concerned, and then you would have to go into the other substantive counts which follow in order to find out what the verdict would be there.

"To determine whether a defendant was a member of the conspiracy you ask yourself whether a particular defendant acted wilfully and with knowledge that his acts were an integral part of the alleged unlawful enterprise, and helped to carry it forward as an associate in it with a desire to see it succeed.

"You must find that the defendant knew what the unlawful purpose was and had a stake or personal interest in it as distinguished from acting exclusively on its own.

"It is not necessary that a defendant be fully informed as to the details or the full scope of the conspiracy in order to justify an inference of knowledge on his part; nor need he even know all the conspirators.

"The guilt of a conspirator is not measured by the extent or duration of his participation; even if he participated to a degree in more limited than that of other co-conspirators, or in a subordinate or a minor way relatively, he is equally culpable as long as he was, in fact, a conspirator. The scope of each defendant's agreement must be determined individually from what was proven as to that defendant.

"In order for a defendant to be held for joining others in a conspiracy, he must in some sense promote their venture himself and make it his own with a desire to see it succeed. To do this, you must determine just what each conspirator is promoting and making his own. A single act may be the basis for drawing an actor within the ambit of the conspiracy, but since conviction as conspiracy requires an intent to participate in the unlawful enterprise, the single act must be

such that one may reasonably infer from it that he had such an intent.

"I want to caution you that mere association with one or more of the conspirators does nto make one a member of the conspiracy, nor is knowledge without participation sufficient.

"Merely because a friendship existed between alleged co-conspirators, you cannot find any defendant guilty merely because of that association or friendship.

"One does not become a member of the conspiracy by rendering services to the conspirators if he does not know of the existence of the conspiracy.

"Acts done innocently, although they tend to further the object of the conspiracy will not render their author a member of the conspiracy. There must be a wilful participation in the conspiracy with the intent to further the common purpose of design. What is necessary is that the defendant participate with the knowledge of at least some of the purposes, and with the intent to aid in the accomplishment of these unlawful ends. In short, a person becomes a member of the conspiracy by associating himself, even though informally, with

a common plan or scheme, knowing the central aim or purpose, and intending to aid in bringing about the success of such plan or scheme.

"All conspirators or alleged conspirators need not have originally or simultaneously have conceived the idea of the conspiracy, nor participated in its inception. In order to be guilty, one who comes in later with knowledge of the means and purposes, or were not necessarily of the details, and who intentionally cooperates in a common effort to gain the unlawful result may become a member of the conspiracy equally with the alleged conspirators, and intending to aid in bringing about the success of the plan or scheme, and he is legally responsible, for the purposes of the conspiracy count, for all the acts done by any of the other members before or after in furtherance of the common purpose like any other partner in a partnership agreement.

"Once you are satisfied beyond a reasonable doubt that a conspiracy existed, and that a particular defendant was a member, then the acts and declarations of the other persons whom you also find were members of the conspiracy, made by such conspirators during its existence and in further-

ance of the objects, are considered the acts and declarations of all the other members of the conspiracy even though they were not present.

"That concludes the discussion on the conspiracy charge."

Now, in addition to that you have asked a second question:

"Is a conspirator responsible for the acts committed by others prior to his joining the conspiracy?"

I just want to have a talk with the lawyers on this point before I address you on this, if you will excuse me.

(At the side bar.)

THE COURT: What I intend to charge here is this, that in discussing the substantive counts and in determining whether or not a defendant is guilty of the substantive count, they may not use anything that has happened prior to his joining the conspiracy in order to arrive at a conclusion as to whether or not he is guilty of that particular substantive count, and that they may only consider that evidence which is subsequent to that as far as his guilt on the substantive count is concerned.

In other words, as lawyers I would say Pinkerton does not apply until he is a member of the conspiracy.

MR. LOWE: I think that's a fair statement.

THE COURT: All right?

MR. ANOLIK: Judge, you don't think, in view of their request, you should charge on multiple conspiracy under Bertolotti?

THE COURT: No. I decline to do that, particularly in view of their request.

(End of side bar discussion.)

THE COURT: The reporter is directed to read to the jury the answer to this question:

"Is a conspirator responsible for the acts committed by others prior to his joining the conspiracy?"

And the reporter will read to you what I said at the side bar and to which the lawyers agreed I may do.

(The reporter read as follows:

"What I intend to charge here is this, that in discussing the substantive counts and in determining whether or not a defendant is guilty of the substantive count, they may not use anything that has happened prior to his joining the conspiracy in

order to arrive at a conclusion as to whether or not he is guilty of that particular substantive count, and that they may only consider that evidence which is subsequent to that as far as his guilt on the substantive count is concerned.")

THE COURT: I have answered your question, so you may retire and deliberate further.

(As the jurors were leaving the courtroom the following occurred:)

THE COURT: I might ask the forelady one question:

Have you agreed on any verdict as to any count yet at this point?

JURORS: Yes, we have.

THE COURT: Then return to the jury box and report it. Report what you have already decided and agreed upon.

All 12 of you agreed, have you, on any particular count?

JURORS: Yes.

THE COURT: All right, then return back and we will make a verdict on which ones you have agreed on so far, if any.

(Jurors return to jury box.)

(Jury roll called - all present.)

THE COURT: Madam Forelady, you have reported to me that you have agreed upon a count or counts, I am not sure which.

Have you agreed on any particular count?

THE FORELADY: Your Honor, I believe we have agreed on 2, 3 or 2, 5 -- I think all except that part we wasn't sure of, the conspiracy count --

THE COURT: Well now, wait a minute, let me ask you this:

On Count 2 have you all agreed on a verdict?

THE FORELADY: I believe we have.

JURORS: No.

THE COURT: All right, you haven't all agreed -- you can sit down at this point and make yourself comfortable --

On Count 3 have you agreed?

JURORS: No.

THE COURT: I see some noes.

JUROR: Only one we agreed on.

THE COURT: Which one do you agree on?

JUROR: I think it says 10 there.

THE COURT: Count 10 is the conspiracy.

JUROR: Yes.

THE COURT: You all agree or the conspiracy count?

JURORS: Yes.

THE COURT: Is that a fact?

JURORS: Yes.

THE COURT: All right, you may report the verdict on the conspiracy count alone without discussing the other counts.

How do you find the defendant Berkson, guilty or not guilty?

THE FORELADY: According to that count, guilty.

THE COURT: And how about the defendant Rind as to Count 10? Did you find him guilty or not guilty?

THE FORELADY: Guilty.

THE COURT: How hearken to your verdict as it has been reported by your forelady:

You find the defendant Berkson guilty on Count 10 and you find the defendant Rind guilty on Count 10?

If that is your verdict, when the Clerk of the Court asks you is that your verdict? will you please answer yes or no.

(Each juror, upon being asked "Is that your verdict?" responded affirmatively.)

THE COURT: All right, the verdict will be

recorded as reported.

Now you go back and deliberate and come to a conclusion on the remaining counts.

You may continue to deliberate on those and when you are ready to report just make it known to the Court.

(Whereupon at 4.15 p.m. the jury returned to the jury room.)

(5.30 p.m. in the courtroom, in the absence of the jury.)

(At the bench.)

THE COURT: I am advised, Mr. Brodsky, that your son is graduating from the Hebrew Theological --

MR. BRODSKY: He is graduating from Hebrew School, Temple Israel in White Plains.

THE COURT: And he is going to bar mitzvahd --

MR. BRODSKY: A week from Saturday. Tonight is the graduation exercise, and I would like to be there.

THE COURT: He is requesting that the jury be sent home at this point.

Do you have any objection?

MR. ANOLIK: I have no objection.

THE COURT: Mr. Lowe has none either.

Also I will ask the j whether they have arrived at a verdict on any other counts.

Because maybe if they have we might be able to wrap it up; is that all right?

MR. ANOLIK: Sure.

(The jury entered the courtroom.)

THE COURT: Madam Forelady, have you arrived at any verdict as to any of the other counts that you have been considering since you last went into the jury room?

THE FORELALY: No. We are working on it. I think it will take another 10 or 15 minutes.

THE COURT: This need not be on the record.

(Off the record.)

THE COURT: Do you think that you can do it within five or ten minutes? I am not trying to rush you.

JURORS: Yes, we can.

THE COURT: You can?

JURORS: Yes.

THE COURT: All right, we will see what happens.

You may retire to the jury room.

I don't want to rush this because I want you

to give it the full consideration it deserves. If you want more time just let me know. We are not going to rush you.

(Jury returned to jury room.)

(5.30 p.m. - in the courtroom, in the presence of the jury.)

THE CLERK: Will the jurors please answer present as their names are called.

(Jury roll called - all present.)

THE CLERK: Madam Forelady, has the jury agreed upon a verdict?

THE FORELADY: We have

THE CLERK: How do you find the defendant Berkson on Count 2?

THE FORELADY: Not guilty.

THE CLERK: Count 3?

THE FORELADY: Guilty.

THE CLERK: Count 4?

THE FORELADY: Guilty.

THE CLERK: Count 5?

THE FORELADY: Guilty.

THE CLERK: Count 6?

THE FORELADY: Guilty.

THE CLERK: Count 7?

THE FORELADY: Guilty.

THE CLERK: Count 8?

THE FORELADY: Guilty.

THE CLERK: Count 9?

THE FORELADY: Guilty.

THE CLERK: How do you find the defendant Rind on Count 2?

THE FORELADY: Not guilty.

THE CLERK: Count 3?

THE FORELADY: Guilty.

THE CLERK: Count 4?

THE FORELADY: Guilty.

THE CLERK: Count 5?

THE FORELADY: Guilty.

THE CLERK: Count 6?

THE FORELADY: Guilty.

THE CLERK: Count 7?

THE FORELADY: Guilty.

THE CLERK: Count 8?

THE FORELADY: Guilty.

THE CLERK: Count 9?

THE FORELADY: Guilty.

THE COURT: Hearken to your verdict as you have reported it to the clerk:

Do you say that your verdict in this case as to the defendant Berkson is on Count 2, not guilty, and on Counts 3 to 9 inclusive guilty; and as to the defendant Rind, not guilty as to Count 2 and as to Counts 3 to 9 inclusive, guilty as to Rind?

If that is your verdict please answer when the clerk calls your name.

(Each juror upon being asked "Is that your verdict?" responded affirmatively.)

THE COURT: Your verdict will be so recorded.

I never comment on a jury's verdict and I don't intend to comment tonight. I simply thank you on behalf of the Court for the service to the Court that you have rendered, and I think you have concluded your term, and you are therefore excused for the rest of the term with the thanks of the Court.

You may leave.

(Jury discharged.)

THE COURT: I assume you are going to reserve your motions?

MR. BRODSKY: Yes, your Honor.

THE COURT: The 21st of July in Room 705 at 9:30 in the morning. If your clients have any letters anything they want to direct to the Court they can

direct them to me or to the Probation Department.

Are you going to reserve your motions also?

MR. ANOLIK: Yes, your Honor.

THE COURT: July 21.

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